

EVIDENTIARY HEARING  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of: )  
 )  
Application for Certification ) Docket No.  
of the San Joaquin Valley Energy) 01-AFC-22  
Center Project in Fresno County )  
(SJVEC) )  
\_\_\_\_\_ )

CALIFORNIA ENERGY COMMISSION  
HEARING ROOM B  
1516 NINTH STREET  
SACRAMENTO, CALIFORNIA

FRIDAY, FEBRUARY 21, 2003

1:27 p.m.

Reported by:  
Valorie Phillips  
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

John L. Geesman, Associate Member

HEARING OFFICER, ADVISORS PRESENT

Major Williams, Jr., Hearing Officer

STAFF AND CONSULTANTS PRESENT

Paul Kramer, Legal Counsel

Mathew Trask, Siting Project Manager

Dale B. Edwards

Kenneth Peterson

Steve Baker

Jim Buntin, Vice President

Bill C. Thiessen, Senior Consultant

Brown-Buntin Associates, Inc.

PUBLIC ADVISER

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Jeffrey D. Harris, Attorney

Greggory Wheatland, Attorney

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Michael A. Argentine, Manager, Project Development

Steven A. DeYoung, Environmental Project Manager

Jim McLucas, Regional Engineer

Calpine Corporation

Gary Rubenstein

Sierra Research

Mark Bastasch, Project Engineer

Thomas Priestley, Senior Environmental Planner

CH2MHILL

APPLICANT

Rob Greene, Manager, Noise and Vibration  
URS Corporation

INTERVENORS

Keith Freitas

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

## P R O C E E D I N G S

1:27 p.m.

HEARING OFFICER WILLIAMS: I'll state for the record that all parties who were present yesterday are again present in the hearing room.

We've talked about some housekeeping matters, primarily the briefing schedule. The first round of briefs will be filed on March 28th, on or before March 28th. And closing briefs will be filed on or before April 11th. And that's contingent on the transcripts being received in sufficient enough time. And we've talked about it, and we believe they will be. If not, we'll adjust the schedule accordingly.

We've marked several exhibits Joint 1 which is a revised Vis-2, and Joint 2 which is a revised Vis-7. The parties will discuss these in their testimony.

I don't see any members of the public in the room, so I'm assuming then we won't have any public comment, except that Mr. Freitas has a statement that he would like to read into the record at this point. So we'll take that.

(Pause.)

HEARING OFFICER WILLIAMS: I would note

1       also that staff has prepared the copies of  
2       exhibits 2U and V, the drawings that were  
3       presented yesterday. Those are shown on our  
4       exhibit list. I believe those were admitted.  
5       Were those admitted, 2U and V? Or are they still  
6       pending?

7               MR. KRAMER: If they are we would move  
8       them into admission. Did we get a decision about  
9       which set is preferred?

10              MR. HARRIS: We should probably come  
11       back to that.

12              MR. WHEATLAND: We prefer the original  
13       version that was presented before the Committee  
14       yesterday.

15              MR. KRAMER: The hand-drawn version?

16              MR. WHEATLAND: Yes, please.

17              MR. KRAMER: Okay.

18              HEARING OFFICER WILLIAMS: Okay, so  
19       those will be admitted, the hand-drawn charts.

20              And we have another staff exhibit, 2X,  
21       which is the Fields article, which will be  
22       distributed once it's copied.

23              MR. KRAMER: It is available -- I  
24       believe the applicant's experts were looking over  
25       it to verify its authenticity.



1 MR. HARRIS: Do they have copies?

2 MR. KRAMER: Steve gave them to them a  
3 little while ago.

4 HEARING OFFICER WILLIAMS: We can  
5 reserve it. I just wanted to identify it for the  
6 record. It's 2X.

7 MR. HARRIS: It's numbered, and we'll  
8 talk about it later.

9 MR. WHEATLAND: We're looking at it  
10 right now.

11 MR. KRAMER: Okay, so you're not ready  
12 yet. Okay.

13 HEARING OFFICER WILLIAMS: So, at this  
14 point we'll hear from Mr. Freitas. Mr. Freitas,  
15 are you ready for your statement?

16 MR. FREITAS: We need another two  
17 minutes, please.

18 HEARING OFFICER WILLIAMS: Okay. Why  
19 don't we come back to that then. We will proceed  
20 then with the applicant's presentation on visual.

21 MR. HARRIS: I can describe the  
22 background before we begin the testimony, what  
23 we're going to hear.

24 HEARING OFFICER WILLIAMS: Okay, let's  
25 do that.

1           MR. HARRIS: The two items that were  
2           marked joint 1 and joint 2 were attempts by staff  
3           and applicant to reach a compromise on those  
4           particular issues. Vis-2 relates to the landscape  
5           plan; Vis-7 relates tot he cooling tower issues.

6           As to Vis-2, the revised language is  
7           essentially an amalgam combining portions of the  
8           staff's most recent condition with proposed  
9           changes from the applicant. And we've included in  
10          joint 1 both a clean version of that document and  
11          a redline, which is a redline off the staff's  
12          latest proposal, I believe. So I think we're all  
13          on the same page on that.

14          I believe that this gives sufficient  
15          detail for applicant, sufficient certainty, while  
16          retaining for the staff the ability to implement  
17          and administer and enforce, as necessary, the  
18          provisions. That's the origin of joint 1.

19          Joint 2 is a condition that is modeled  
20          on actually a condition that's in the East  
21          Altamont proposed decision. The effort there is  
22          to put together essentially a design parameter.  
23          That design parameter gives the applicant the  
24          certainty that we need to be able to order a  
25          cooling tower in certain designs.

1           The condition also gives the staff, I  
2           think, sufficient certainty with regard to what  
3           they predicted frequencies of plumes may be within  
4           those design parameters. So joint 2 is a markup  
5           of, I think of the staff's February 13th filing on  
6           Vis-7. And that's for the Committee, as well.

7           And so those are the backgrounds for  
8           those two documents.

9           And I think the way that we'll proceed  
10          is we'll have Dr. Priestley briefly walk through  
11          the protocol of Vis-2, which sets forth some of  
12          the specifics in the landscape plan. Then we'll  
13          have Mr. Rubenstein, who has been previously  
14          sworn, walk through briefly Vis-7. And then make  
15          the witnesses available for cross-examination at  
16          that point.

17          HEARING OFFICER WILLIAMS: Thank you,  
18          Mr. Harris. Let's go off the record.

19          (Off the record.)

20          HEARING OFFICER WILLIAMS: Back on the  
21          record. Mr. Freitas.

22          MR. FREITAS: Yes, I would like to read  
23          a statement into the --

24          ASSOCIATE MEMBER GEESMAN: Should we  
25          swear him in?

1 HEARING OFFICER WILLIAMS: Yeah, I think  
2 probably we should. Do you want to swear him.

3 REPORTER: Previous to yesterday he was  
4 sworn in over the phone.

5 MR. FREITAS: Oh, that's right.

6 HEARING OFFICER WILLIAMS: Okay. Well,  
7 let's --

8 ASSOCIATE MEMBER GEESMAN: Want to just  
9 renew it?

10 HEARING OFFICER WILLIAMS: -- do it in  
11 person.

12 MR. FREITAS: I was just seeing if  
13 everybody was awake.  
14 Whereupon,

15 KEITH FREITAS  
16 was called as a witness herein, and after first  
17 having been duly sworn, was examined and testified  
18 as follows:

19 MR. FREITAS: I'm going to read into the  
20 record a revised what would be known as maybe not  
21 testimony to some, but a statement to others. So  
22 whatever we call it, a statement, a declaration or  
23 a testimony, but it's a revised position I've  
24 taken.

25 This is February 21, 2003. My name is

1 Keith Freitas; I'm an Intervenor in the  
2 proceeding.

3 After careful consideration I've decided  
4 to revise my testimony as to whether the Calpine  
5 Company should be allowed to license and operate a  
6 1060 megawatt power plant in the City of San  
7 Joaquin.

8 My new testimony will be revised to read  
9 as follows: After hearing the witness testimony  
10 from both the staff and the applicant dealing with  
11 the remaining contested issues two concerns  
12 causing doubt as to the credibility of the  
13 applicants and the applicant's documents presented  
14 at the hearings, and used in the application filed  
15 with the CEC, have been raised.

16 For this reason I must reverse and  
17 reserve my position regarding my full endorsement  
18 of this project until I have had time to review  
19 completed briefs and have completed my documents  
20 request from the EPA, State Air Quality Control  
21 Board, Fresno area, residents of the City of San  
22 Joaquin, business members of the City of San  
23 Joaquin and other regulatory agencies, including  
24 the Fresno Irrigation District, the ISO and  
25 Westlands Water District.

1 HEARING OFFICER WILLIAMS: Okay. Thank  
2 you, Mr. Freitas. Now we'll move on to staff's  
3 presentation on the topic of visual resources.  
4 Applicant's, I'm sorry.

5 MR. HARRIS: Thank you, feel like staff,  
6 sometimes.

7 Mr. Rubenstein's been sworn. You  
8 haven't been sworn yet, have you?

9 DR. PRIESTLEY: No.

10 MR. HARRIS: I'd ask that Dr. Priestley  
11 be sworn.

12 Whereupon,

13 THOMAS PRIESTLEY  
14 was called as a witness herein, and after first  
15 having been duly sworn, was examined and testified  
16 as follows:

17 DIRECT EXAMINATION

18 BY MR. HARRIS:

19 Q Preliminary matter, Dr. Priestley, were  
20 the documents that are your testimony previously  
21 identified in section 1D of your testimony?

22 DR. PRIESTLEY: Yes.

23 MR. HARRIS: And those are, for the  
24 record, section 8.11, which is part of exhibit 1;  
25 data adequacy supplement exhibit 3.1; data

1 response set 1A, exhibit 3A.1; data response set  
2 1B, 3K.1. The fourth bullet, data response set 1B  
3 is 3K.1. Data response set 1D, 3K.2; and staff  
4 assessment comments exhibit 3A.2.

5 So, again, exhibit 1, exhibit 3.1,  
6 exhibit 3A.1, exhibit 3K.1, exhibit 3K.2 and  
7 exhibit 3A.2.

8 Actually I would ask if the parties  
9 would stipulate to Dr. Priestley's testimony as an  
10 expert and I can skip the preliminary matters.

11 MR. KRAMER: So stipulated.

12 MR. FREITAS: So stipulated.

13 MR. HARRIS: Thank you.

14 Dr. Priestley, I've already given some  
15 introductory remarks about joint 1 that combined  
16 Vis-2. Will you briefly take us through the items  
17 in the protocol and explain the landscape plan  
18 that's described there?

19 DR. PRIESTLEY: Certainly. Just by way  
20 of very brief introduction, in the AFC we proposed  
21 a conceptual landscape plan. After the release of  
22 the AFC we got some feedback from CEC Staff and  
23 from the City of San Joaquin where we revised our  
24 plan, based on that feedback.

25 In the staff addendum staff had some

1 additional very specific ideas about modifications  
2 to this landscape plan. And we appreciated kind  
3 of where staff's intent, and have been working  
4 with staff to work out the final detailed plan  
5 that we can all agree to. And that's what's  
6 reflected here in the protocol.

7 And what I'd like to do now is make  
8 reference to figure VR-128A-1 which was filed as a  
9 part of a data response. This is an air photo of  
10 the project site and the surrounding area.

11 On top of this air photo we have  
12 superimposed the outlines of the major power plant  
13 equipment and also the landscaping that we had  
14 been proposing at that time.

15 Very briefly, the project property,  
16 itself, is this 85-acre parcel bounded by Colorado  
17 and the Southern Pacific Railroad on the East  
18 Springfield Avenue on the south.

19 The portion of the property that will be  
20 occupied by the facilities is about 25 acres or  
21 so. So it's a much smaller subset of the entire  
22 property.

23 So one thing that's maybe a little bit  
24 unusual about this project is the fact that the  
25 project property is so big, which has allowed the



1 applicant kind of the flexibility to locate the  
2 facility as far away from the main part of town as  
3 possible. It's been kind of pushed down here in  
4 the southeast corner of the site, while still  
5 maintaining a little bit of a buffer here at this  
6 corner.

7 But this, then, has allowed much more  
8 landscaping that is typically possible on  
9 projects, just because the site is so big and some  
10 of the landscaping can be put so far from the site  
11 and closer to the viewer is greatly increasing its  
12 effectiveness.

13 So, kind of the bottomline in terms of  
14 what staff and the applicant have agreed to do, if  
15 we take a look at B under 1, under protocol, we'll  
16 start with this corner down here at Springfield  
17 and Colorado.

18 And there the concept that we have all  
19 agreed to is that this area would be landscaped  
20 with a grove of palm trees. And the idea is to  
21 create a landmark element at what will essentially  
22 become the new entrance to the community of San  
23 Joaquin along Colorado Boulevard.

24 And this is an idea actually that came  
25 from the staff. Staff had noticed in our earlier

1 renderings of the view of this corner that an  
2 advantage of the palm trees is that you plant  
3 pretty good sized trees at the beginning which  
4 provide some screening. And their thought was,  
5 well, let's plant palms that are species that are  
6 of different heights so that you get more of a  
7 mass of fronds and vegetation to provide a higher  
8 degree of screening. So this is precisely what we  
9 have agreed to do here under B.

10 And as a part of that, as well, behind  
11 the palm trees there would be a row of tall, fast-  
12 growing, broadleaf evergreen trees which  
13 effectively means eucalyptus trees or something  
14 like it, that will provide, over time, a pretty  
15 dense screening.

16 And so those trees would essentially  
17 wrap around from the southern end of the cooling  
18 tower behind the palm trees and then down along  
19 Springfield. Although, as this condition  
20 indicates, an issue that's going to have to be  
21 dealt with is the fact that you have a number of  
22 transmission lines crossing here. And, of course,  
23 under the transmission lines you'll have to use  
24 shorter trees that won't create a conflict in  
25 terms of clearance with the conductors.

1           And then C refers to the stretch along  
2   Colorado from the southern end of the cooling  
3   tower up to the northern corner of the property.  
4   And here we are agreeing with staff's suggestion  
5   that we plant a staggered double row of tall,  
6   fast-growing, evergreen trees that will make a  
7   pretty dense screen.

8           Around the northern corner of the site,  
9   again, right here behind Mr. Freitas' property  
10   there would also be a tall row -- a double row of  
11   tall, fast-growing, evergreen trees.

12           Okay, and then along Manning Avenue,  
13   this is we're proposing some offsite planting that  
14   was at the specific request of both the Energy  
15   Commission Staff and the City of San Joaquin --

16           MR. HARRIS:  If I can interrupt, are you  
17   now on to 1E, is that correct?

18           DR. PRIESTLEY:  Yeah, and actually maybe  
19   there's a numbering problem here.  After E there's  
20   another paragraph which may be, I don't know  
21   whether we can go back in and label this as F,  
22   just to make it clear.

23           MR. HARRIS:  Okay, is that a separate  
24   description?

25           DR. PRIESTLEY:  So, it's the next

1 paragraph of --

2 MR. HARRIS: It begins along the south  
3 side of Manning Avenue?

4 DR. PRIESTLEY: Right.

5 MR. HARRIS: Okay. Let' come back to  
6 that renumbering issue, but I see the issue.

7 DR. PRIESTLEY: Okay, so essentially  
8 what we're agreeing to in this block of text is  
9 essentially a colonnade of palm trees along both  
10 sides of Manning Avenue with the intent of  
11 creating kind of a dramatic entry to the City of  
12 San Joaquin for people coming from the east.

13 It would also provide the benefit of  
14 kind of focusing the attention of drivers, you  
15 know, kind of straight ahead down this alley of  
16 trees and away from the power plant.

17 Staff was concerned about views toward  
18 the south, toward the power plant. So our  
19 suggestion is inter-planting between the palm  
20 trees some species of lower growing evergreen  
21 tree, whether it be a very low growing palm, a  
22 citrus or some other evergreen tree that would  
23 provide more like eye-level screening for people  
24 driving down here, or perhaps people looking from  
25 points north.

1                   Okay, moving along to what is labeled --

2                   MR. HARRIS:   F.

3                   DR. PRIESTLEY:  -- F.  Okay, let me go  
4           to D.  Let me go to D here.  D calls for  
5           essentially offsite landscaping.  You may know the  
6           story that this land is being purchased by the  
7           City of San Joaquin for industrial development.  
8           And at the request of the City of San Joaquin we  
9           have agreed to put in a row of trees along the  
10          east side of Colusa Avenue from Springfield  
11          extending up to where Cherry Lane would come in.  
12          And we're proposing two rows of trees, something  
13          short and attractive right along the edge of the  
14          road to provide some visual interest.  And then  
15          behind that a single row of tall, fast-growing,  
16          evergreen trees that would screen views from  
17          further to the west.

18                  So these trees would have the effect,  
19          then, of screening views toward the power plant  
20          and towards the new industrial park from these  
21          homes located over at the corner of Springfield  
22          and Colusa, and certainly for anyone driving up  
23          and down Colusa, as well.

24                  And then the final point is -- well, F,  
25          what's labeled F here.  There would be a single

1 row of tall, fast-growing trees along the western  
2 edge of the site from a point a little bit south  
3 of Cherry Lane extending up to the northern corner  
4 of the site.

5 And then finally, what's labeled G here,  
6 at the gas metering station, which is over by I-5,  
7 appropriate landscaping would be put in to  
8 integrate the station into its site.

9 MR. HARRIS: Mr. Williams, there is an  
10 issue with the lettering here. There's an  
11 unlettered paragraph, and so we're going to need  
12 to revise this.

13 And on the second page of the document E  
14 is a, well, one-sentence paragraph. The full  
15 paragraph below that ought to be labeled F. And  
16 that shows my lack of mastery of Microsoft Word.  
17 And the conforming changes, as well.

18 So, what's labeled as F at the top of  
19 the next page becomes G, obviously. And G becomes  
20 H. And we will make those revisions and get those  
21 to you.

22 HEARING OFFICER WILLIAMS: Okay, thank  
23 you.

24 MR. HARRIS: Apologize for my ineptitude  
25 with the computer there.

1           So that's all we have to explain Vis-2.  
2           I'd like to now have Mr. Rubenstein explain what's  
3           now joint 2, the revisions to condition Vis-7.

4           So, Mr. Rubenstein, can you please  
5           explain those changes?

6           MR. RUBENSTEIN: Yes. By way of  
7           background both the applicant and the staff in  
8           this proceeding --

9           MR. KRAMER: Mr. Williams.

10          MR. TRASK: Can we go off the record for  
11          a second? I need to bring in Will Walters by  
12          phone to hear this part.

13          HEARING OFFICER WILLIAMS: Off the  
14          record.

15          (Off the record.)

16          HEARING OFFICER WILLIAMS: Note that  
17          staff's expert, Mr. Walters, has been conferenced  
18          in and is available. Mr. Walters?

19          MR. WALTERS: Yes, sir.

20          HEARING OFFICER WILLIAMS: Good  
21          afternoon.

22          MR. WALTERS: Thank you.

23          HEARING OFFICER WILLIAMS: Okay.

24          UNIDENTIFIED SPEAKER: Is this the same  
25          Mr. Walters as --

1 HEARING OFFICER WILLIAMS: Yes.

2 MR. RUBENSTEIN: Will, this is Gary  
3 Rubenstein. By way of background in the  
4 discussion of Vis-7, both the staff and the  
5 applicant performed modeling analyses using  
6 different techniques, evaluating the frequency of  
7 formation of visible plumes from the project.

8 And while there remains substantive  
9 disagreements between the staff and the applicant  
10 regarding some of the analytical methodologies,  
11 both of our analyses for this project reached the  
12 same conclusion, which was that there would not be  
13 any significant plume-related impacts.

14 The staff had originally proposed a  
15 version of Vis-7 that the applicant found  
16 objectionable. And on February 13th the staff  
17 proposed an alternative formulation based on the  
18 structure of the condition that had been  
19 negotiated in the East Altamont proceedings.

20 The document that we presented that's  
21 labeled joint 2 is a revised version of Vis-7 that  
22 the applicant finds acceptable. Based on  
23 discussions with staff, it's our understanding  
24 that in principle the staff has accepted this  
25 condition as well, subject to verification of two



1 of the numbers contained in the second paragraph  
2 of the verification.

3 And it's our understanding that the  
4 staff is attempting to verify their concurrence  
5 with those numbers and hopes to do so by next  
6 week.

7 If the staff concurs with those numbers,  
8 then I believe there is no disagreement between  
9 the applicant and the staff on the visual plume  
10 issue, and we both agree to Vis-7 as proposed in  
11 exhibit joint 2.

12 MR. HARRIS: Thank you, Mr. Rubenstein.  
13 That's all for our direct testimony. We'd make  
14 the witnesses available.

15 HEARING OFFICER WILLIAMS: Okay. Let me  
16 see, then we'll admit joints exhibits 1 and 2.  
17 And, staff, do you have any questions at this  
18 point?

19 MR. KRAMER: No. I just want to state  
20 that we agree with Mr. Rubenstein's  
21 characterization of our position on Vis-7. We're  
22 willing to close the record with regard to that.  
23 But we want to retain the ability to report back  
24 if there's a disagreement. And we'll have to  
25 address it then, at that point, whether we need to

1       reopen the record for more testimony or how we  
2       resolve it if that does become a disagreement.

3               HEARING OFFICER WILLIAMS:  Okay, that's  
4       fine.

5               MR. FREITAS:  I'd like to ditto that.

6               HEARING OFFICER WILLIAMS:  That's fine,  
7       thank you.

8               MR. FREITAS:  And I'd like to add one  
9       other thing.

10              HEARING OFFICER WILLIAMS:  Yes.

11              MR. FREITAS:  I don't believe that Vis-7  
12       and Vis-2, in my opinion, dealt entirely with the  
13       compliance issues.  Completely with the compliance  
14       issue.

15              HEARING OFFICER WILLIAMS:  Okay, well,  
16       we'll come back to that.  Does that conclude  
17       staff's presentation?

18              ASSOCIATE MEMBER GEESMAN:  That's the  
19       applicant.

20              (Laughter.)

21              HEARING OFFICER WILLIAMS:  Concludes the  
22       applicant -- I'm sorry, the applicant's  
23       presentation?  Okay.

24              Then, staff.

25              MR. KRAMER:  I think we simply need to

1 offer into the record our staff assessment and the  
2 supplement or the addendum testimony regarding  
3 visual, as well as our comments in exhibit 20.

4 MR. HARRIS: Should we close out our  
5 witnesses over here?

6 HEARING OFFICER WILLIAMS: Yes. And I  
7 would state that I believe the entire staff  
8 assessment and the supplement are admitted.

9 MR. HARRIS: On that point, at the end  
10 of the day we'll support a motion that as a  
11 housekeeping, make sure the entire assessment --

12 HEARING OFFICER WILLIAMS: Okay, yeah,  
13 that would be good. That would be good.

14 MR. KRAMER: Okay, great.

15 HEARING OFFICER WILLIAMS: Okay, now,  
16 Mr. Freitas, you have some exhibits that you want  
17 to introduce, and you also perhaps want to explain  
18 what you meant by the compliance?

19 MR. FREITAS: I think I just wanted to  
20 be clear, and maybe staff and the applicant can  
21 give me some direction as to how verification  
22 equals compliance.

23 HEARING OFFICER WILLIAMS: Staff, do you  
24 want to tackle that? Do you understand that?

25 MR. KRAMER: How verification equals --

1 well, I guess I'd rather have sworn testimony from  
2 our witnesses on that point. I believe they need  
3 to be sworn yet.

4 HEARING OFFICER WILLIAMS: Okay.

5 MR. HARRIS: Major, just so we have a  
6 clean record, am I clear that the staff had no  
7 cross for my witnesses?

8 MR. KRAMER: Right.

9 MR. HARRIS: And Mr. Freitas had no  
10 cross for my witnesses?

11 MR. FREITAS: Yes, I do.

12 MR. HARRIS: I was afraid I'd have to  
13 ask that.

14 HEARING OFFICER WILLIAMS: Okay. Do you  
15 want to -- well, then we'll come back to the  
16 compliance issue --

17 MR. FREITAS: I was following your lead,  
18 so --

19 HEARING OFFICER WILLIAMS: Okay, well,  
20 why don't you do your cross-examination and then  
21 we'll come back to the compliance issue.

22 CROSS-EXAMINATION

23 BY MR. FREITAS:

24 Q I want to make sure I get the doctor's  
25 name absolutely right.

1 MR. HARRIS: Priestley.

2 MR. FREITAS: Priestley. Priestley or  
3 Priesly?

4 DR. PRIESTLEY: Priestley.

5 MR. FREITAS: Priestley, okay. Dr.  
6 Priestley, are you familiar with visual resources,  
7 Visual-8, figure 13, that was in staff's -- help  
8 me out, Matt --

9 MR. TRASK: Staff assessment.

10 MR. FREITAS: -- staff assessment?

11 MR. TRASK: Actually that may be from  
12 the addendum, I'm not sure which version you have  
13 there, but I believe they're the same in both.

14 MR. HARRIS: Keith, what's the reference  
15 again? What's the document called?

16 MR. FREITAS: Figure 13, staff  
17 assessment.

18 DR. PRIESTLEY: Okay, this is figure 13  
19 from the original staff assessment.

20 MR. FREITAS: Yes.

21 DR. PRIESTLEY: Okay, I now have it in  
22 front of me.

23 MR. FREITAS: Do you know who generated  
24 this rendition? This is a photograph that's been  
25 digitally altered to make a representation of the

1 visual impact of the stack --

2 DR. PRIESTLEY: If you like I can tell  
3 you a little bit of the background --

4 MR. FREITAS: Okay.

5 DR. PRIESTLEY: -- about this. This is  
6 based on a photograph that was taken by a photo  
7 specialist from my company, using a 50 mm lens.  
8 And then the visual simulation was created by a  
9 firm called Environmental Vision; they're based in  
10 Berkeley, and they're really kind of the top of  
11 the line people for generation of visual  
12 simulations.

13 They use a process that involves  
14 integration of information from a GIS system and  
15 the CAD system to establish the location of the  
16 facility in the image and get the proper scale  
17 and --

18 MR. FREITAS: That's enough, that's  
19 enough, --

20 DR. PRIESTLEY: Okay.

21 MR. FREITAS: I understand. That's  
22 good.

23 DR. PRIESTLEY: Yeah.

24 MR. FREITAS: My main question on this,  
25 and it's a rebuttal question to some of the

1 testimony you've given earlier, just to clarify  
2 some of your statements.

3 Did you do a traffic study?

4 DR. PRIESTLEY: Excuse me?

5 MR. FREITAS: Did you -- did this come  
6 with a traffic study that would say how many  
7 eyeballs there would be seeing this position, this  
8 picture from this position?

9 DR. PRIESTLEY: Yeah, if you look at our  
10 testimony, to the extent that traffic data was  
11 available, we indicated the numbers of vehicles  
12 using the streets at each of the viewpoints.

13 MR. FREITAS: I've been in San Joaquin  
14 for 23 years and from this particular location  
15 here I could probably tell you how many cars in a  
16 year will actually drive in that direction looking  
17 at that view.

18 I was just curious if you guys had made  
19 that a part of your analysis.

20 DR. PRIESTLEY: We'd have to look back  
21 at the AFC to see if we were able to come up with  
22 a figure. To the extent that figures are  
23 available on traffic levels, we use them.

24 MR. FREITAS: Okay, because I was just  
25 curious how, you know, how much importance that

1 your visual aid here had to the overall  
2 presentation as it related to eyeballs actually  
3 seeing that picture, besides staff, the  
4 Commissioners and the public looking at this  
5 picture. That don't live in San Joaquin and don't  
6 drive down that road.

7 I was just wondering what kind of --  
8 what level of importance you give it. Because to  
9 me it doesn't mean hardly anything because there's  
10 not that many eyeballs that are going to see that  
11 picture. That's the point I'm trying to make.

12 MR. HARRIS: Is there a question, Keith?

13 MR. FREITAS: Yeah. Could you give a  
14 level of importance?

15 DR. PRIESTLEY: Well, what I can say is  
16 the approach that's typically taken in the  
17 analysis of this kind of a project is for the  
18 applicant and CEC Staff to collaborate to pick a  
19 set of viewpoints around the project that identify  
20 the views that are perhaps most frequently seen  
21 and perhaps the most sensitive, and views which  
22 are kind of typical.

23 And this was intended to be a view that  
24 was, you know, sort of representative of views of  
25 the project from the residential portions of the



1 City of San Joaquin.

2 MR. FREITAS: Was anybody in the local  
3 area asked to participate in the survey?

4 HEARING OFFICER WILLIAMS: What survey  
5 are you talking about, Mr. Freitas?

6 MR. FREITAS: Well, this was a -- he had  
7 to do some form of survey to come up with an  
8 analysis with his scientific data. He had to do a  
9 survey, either a traffic survey to determine how  
10 many eyeballs for visual impact that would be.  
11 And I was wondering if he actually did witness, if  
12 he interviewed any witnesses.

13 HEARING OFFICER WILLIAMS: Why don't you  
14 just ask him if he did a survey or how he --

15 MR. FREITAS: Well, I think I just did.  
16 I said did you ask anybody to -- did you do a  
17 survey?

18 DR. PRIESTLEY: Yeah, I'm not exactly  
19 sure what you mean by survey.

20 MR. FREITAS: How did you collect your  
21 data?

22 DR. PRIESTLEY: Well, we relied on data  
23 from a number of different sources, and I  
24 indicated earlier to the extent that traffic data  
25 was available from, you know, public sources, we

1       made reference to that data.

2               I also had --

3               MR. FREITAS:  I'm sorry, I'm sorry, to  
4       public sources?  Which public sources?

5               DR. PRIESTLEY:  Yeah, so essentially I  
6       talked to our traffic person who had access to  
7       traffic data put out by the County and other  
8       agencies.

9               MR. FREITAS:  Do you know -- can you  
10      cite the public sources?

11              DR. PRIESTLEY:  We'd have to go back, I  
12      think, to the AFC to give you a specific source.

13              MR. HARRIS:  And I guess I would object  
14      to the --

15              MR. FREITAS:  Okay.

16              MR. HARRIS:  -- extent the traffic  
17      information is in the traffic testimony, Keith, so  
18      it's not --

19              MR. FREITAS:  Okay.

20              MR. HARRIS:  -- that we collect it, we  
21      don't know, it's just those visual and --

22              MR. FREITAS:  Okay.  I was just  
23      wondering if he had related that traffic  
24      information into his survey and into these  
25      photographs.

1 DR. PRIESTLEY: Yeah, consideration of  
2 the traffic data, you know, was definitely a  
3 factor in terms of selection of the key  
4 viewpoints.

5 MR. FREITAS: Why were the key  
6 observation points selected? And specifically why  
7 the view from those particular vantage points?

8 DR. PRIESTLEY: Again, this is a pretty  
9 typical procedure to make an assessment of what  
10 are the viewpoints -- well, first of all, an  
11 identification of what are the areas from which  
12 the project is potentially visible.

13 From within that, looking at traffic  
14 data, land use data and so on, to come up with a  
15 representative set of views that again reflect  
16 what are the areas, in fact, where are the most  
17 viewers; and other areas that are kind of typical  
18 representative of generic sets of views.

19 MR. FREITAS: Let's move to figure 14.  
20 I believe you stated in your earlier testimony, I  
21 think that's that same picture right there. Can  
22 we safely say it's the same picture as you have up  
23 on your board, figure 14?

24 DR. PRIESTLEY: It's from the same  
25 location.

1 MR. FREITAS: Same viewpoint, right,  
2 basically?

3 DR. PRIESTLEY: Yeah.

4 MR. FREITAS: Just a closer shot, right?

5 DR. PRIESTLEY: It's -- you know, yeah,  
6 it's interesting --

7 MR. FREITAS: This is the --

8 DR. PRIESTLEY: Yeah.

9 MR. FREITAS: I got to talk into a mike.  
10 Can I borrow your mike --

11 This is the vantage point from where you  
12 were viewing that --

13 DR. PRIESTLEY: Correct.

14 MR. FREITAS: -- when you drew these  
15 trees, so basically if we were looking at this  
16 same figure 14, --

17 DR. PRIESTLEY: Yeah.

18 MR. FREITAS: -- without your digitally  
19 altered landscaping, this is what we would see?

20 DR. PRIESTLEY: Correct.

21 MR. TRASK: There is such a picture in  
22 the staff assessment.

23 MR. FREITAS: And there is such a  
24 picture? I just wanted to correlate that figure  
25 14 to this poster, Matt, that's what I was trying

1 to do.

2 HEARING OFFICER WILLIAMS: The record  
3 should reflect that Mr. Freitas is pointing to a  
4 blow-up of figure 3 from the staff assessment.

5 MR. FREITAS: Doctor, I believe that you  
6 testified earlier that one of the reasons that you  
7 suggest this design model for landscaping with the  
8 cluster at this corner that we're talking about  
9 now is because it represented the entrance?

10 DR. PRIESTLEY: Yeah, with the  
11 construction of the plant essentially the entry to  
12 the community would be moving south to this  
13 corner.

14 MR. FREITAS: Okay, are you familiar  
15 with the I-5 corridor project?

16 DR. PRIESTLEY: You'll have to --

17 MR. FREITAS: It's called the I-5  
18 Business Development Corridor.

19 DR. PRIESTLEY: I've heard it mentioned.

20 MR. FREITAS: Okay, the I-5 business  
21 development corridor essentially establishes the  
22 entrance to the City of San Joaquin on Manning  
23 north -- I mean east- and westbound off Manning --  
24 on Manning.

25 So my question to you is why would you

1       emphasize this type of cluster entryway type of an  
2       approach at landscaping, claiming that Colorado  
3       Avenue, which is hardly traveled as much as  
4       Manning Avenue, and is not the entrance to the  
5       City, as being representative of an entrance type  
6       of a cluster to shelter the impact?

7               And let me just take it to figure 12.  
8       Let's look at figure 12 now, in the same set of  
9       documents.

10              Now, it's a digitally altered -- this is  
11       a digitally altered picture, but this is actually  
12       what we would consider the entrance to the City,  
13       this location here is the corner of Colorado and  
14       Manning Avenue.

15              And if you'll note the visual impact of  
16       the power plant is much more pronounced at that  
17       location than it would be at Colorado, northbound  
18       Colorado versus if you were to be heading  
19       eastbound or westbound, especially westbound on  
20       Manning.

21              Would you agree?

22              DR. PRIESTLEY:  Oh, I'm not quite sure  
23       what the question is.

24              MR. FREITAS:  I'm just asking if you'd  
25       agree.

1 MR. HARRIS: With what?

2 MR. FREITAS: With the impact. With  
3 the -- okay, first of all, do you understand that  
4 the entrance to the City of San Joaquin is on  
5 Manning Avenue?

6 DR. PRIESTLEY: Yeah, I understand that  
7 one entrance -- well, two of the entrances to the  
8 City of San Joaquin, the entrance, you know, for  
9 people driving over from the Fresno area, they  
10 would be coming in on Manning from the east. And  
11 then people coming from I-5 would be coming the  
12 other way. But then --

13 MR. FREITAS: Right, coming west --

14 DR. PRIESTLEY: -- the town has northern  
15 and southern entrances, as well.

16 MR. FREITAS: Sure.

17 DR. PRIESTLEY: And we were dealing with  
18 the southern entrance because that's the one where  
19 there is really some, a real direct nexus with our  
20 project.

21 MR. FREITAS: And you're saying that the  
22 visual -- okay, see the difference -- the reason  
23 that I have a problem with this, Mr. Geesman, and  
24 I appreciate you giving me some allowance here, is  
25 that we don't have a digital view -- a vantage,

1       there wasn't a digital picture at that vantage  
2       point that's up on the board.

3               MR. TRASK:  Yes, there is; it is figure  
4       5.

5               MR. FREITAS:  But it doesn't show the  
6       plant, Matt.  It's not a digitized picture of the  
7       plant.

8               MR. TRASK:  That's what you're holding  
9       now.

10              MR. FREITAS:  No, not from that vantage  
11      point.  Do you see the difference?

12              MR. KRAMER:  Looks like it to me.

13              DR. PRIESTLEY:  Oh, yeah, actually,  
14      yeah, there is one in here.

15              MR. FREITAS:  Is there one in here?

16              MR. TRASK:  You're asking for a  
17      simulated view of the power plant from --

18              MR. FREITAS:  A simulated view of the  
19      power plant from that angle right there, from that  
20      vantage point.

21              MR. TRASK:  Oh, this one right here?

22              MR. FREITAS:  Okay, without the  
23      landscaping, but that's okay if there's some  
24      landscaping.

25              (Pause.)



1 MR. TRASK: That would be figure 10.

2 MR. FREITAS: Figure 10. Oh, it is in  
3 there?

4 MR. TRASK: Yes.

5 (Pause.)

6 MR. HARRIS: Mr. Williams, I wanted to  
7 note that we spent a lot of time on staff's  
8 testimony, but we did supply most of these visual  
9 simulations. I'm not objecting on that basis.

10 HEARING OFFICER WILLIAMS: Go ahead.

11 MR. FREITAS: Did you want to rule or  
12 anything?

13 HEARING OFFICER WILLIAMS: No, no,  
14 continue.

15 MR. FREITAS: Sorry. Mr. Priestley, is  
16 it your opinion that the traffic -- or excuse me,  
17 back up, strike that. Let me lay a foundation.

18 Did you do a traffic study or correlate  
19 any traffic studies to your reasoning of why you  
20 would design the landscaping from this vantage  
21 point? Did you correlate any traffic studies to  
22 that?

23 I think I'm asking Dr. Priestley.

24 DR. PRIESTLEY: Yeah, there certainly  
25 was a consideration of traffic levels. And,

1 again, there was also a consideration of the fact  
2 that, you know, that there's a nexus to the  
3 project; that this is the corner that was  
4 affected, this is the view that was affected by  
5 the project and required some treatment.

6 MR. FREITAS: Did you do any, in your  
7 traffic analysis study determine newcomers to the  
8 City, the more traffic by newcomers to the City  
9 versus people who lived there every day, and which  
10 way they traverse or go?

11 The only reason i'm bringing that up is  
12 because of the -- strike that.

13 MR. HARRIS: I want to object to the  
14 traffic questions. We will stipulate that Dr.  
15 Priestley did not perform his own traffic  
16 analysis.

17 MR. FREITAS: Okay, that's --

18 MR. HARRIS: He did rely on the analysis  
19 of others. So, we'll stipulate to that.

20 MR. FREITAS: So is your testimony today  
21 that you did rely on traffic studies done by other  
22 people?

23 DR. PRIESTLEY: I relied on traffic data  
24 collected by others, yes.

25 MR. FREITAS: With this project?

1 DR. PRIESTLEY: Yes.

2 MR. FREITAS: And is it the traffic data  
3 that's been introduced as evidence and accepted  
4 into evidence?

5 DR. PRIESTLEY: I don't know whether  
6 you've had a chance to take a look at the AFC, but  
7 in the AFC there's a discussion of each of those  
8 viewpoints. And to the extent that traffic data,  
9 you know, was available, it's cited in the  
10 discussion of the existing conditions at each of  
11 those viewpoints.

12 MR. FREITAS: Okay. What's a  
13 construction laydown area?

14 DR. PRIESTLEY: It's an area, you know,  
15 during the construction process it's an area that  
16 would typically be surrounded by a chainlink  
17 fence, and it would contain various pieces of  
18 equipment, you know, that would be stored there at  
19 night, as well as particularly, you know, pieces  
20 of equipment that are going to be part of the  
21 power plant, you know, the material.

22 MR. FREITAS: But it's not the proposed  
23 site? It's not the site? It's not the location  
24 of the power plant?

25 DR. PRIESTLEY: Usually, yeah, usually

1       they're -- we have a very big piece of property  
2       here so the laydown areas would be located, you  
3       know, on this 85-acre piece of property, and you  
4       know, very close to where the construction is  
5       taking place.

6               MR. FREITAS:   Okay.

7               MR. HARRIS:   Mr. Freitas has handed us  
8       figure 8.5-2 which is the weighted sound level  
9       contours in dba's.   Just to give us an orientation  
10      of the surrounding area, I assume, not for the  
11      noise issues?

12              MR. FREITAS:   Yes.   I'm not trying to  
13      cross over back into sound.

14              MR. HARRIS:   Thank you.

15              MR. FREITAS:   Into noise.

16              MR. HARRIS:   Your question?

17              MR. FREITAS:   I'm just using that as a  
18      visual guide reference.

19              MR. HARRIS:   Yeah.   Your question,  
20      please?

21              MR. FREITAS:   I checked with the  
22      gentleman that testified for staff yesterday and  
23      got the actual estimated distances there.

24              As you can see from the point of the  
25      center of the power plant roughly it's 3700 feet

1 to the west and 3600 feet to the east from the  
2 central point of the plant.

3 And the reason I'm bringing that up  
4 is -- I have to go over here and use this --

5 Dr. Priestley, if I'm sitting right, my  
6 foreman lives in that home that is marked on  
7 figure 8.5-2, that's my foreman's house right  
8 there. He lives there.

9 And that house is located roughly about  
10 right here. And we sit on his front porch at  
11 night and we like to watch the sun go down into  
12 the west, into the foothills.

13 Would there be a visual impact from the  
14 plumes or the stacks that would prevent us from  
15 being able to enjoy that view?

16 HEARING OFFICER WILLIAMS: Dr.  
17 Priestley, in your response could you more  
18 precisely identify the point that --

19 DR. PRIESTLEY: Yeah, in fact, you know,  
20 if I may I'd like to make reference to a figure  
21 that was included in the AFC. It's figure 8.11-2,  
22 which is based on a USGS topo map. Try to get out  
23 of everybody's way here.

24 And on it you'll see again the project  
25 property is this black triangle. The area where

1 the power plant, itself, would be is this purple  
2 box.

3 HEARING OFFICER WILLIAMS: Let the  
4 record reflect that Dr. Priestley is now pointing  
5 to figure 8.11-2 from the AFC.

6 DR. PRIESTLEY: And on this map we have  
7 located residences that are in the rural area  
8 surrounding the project site. This dotted line  
9 that you see represents the area that is a half a  
10 mile or more from the edge of the project site,  
11 itself.

12 And I believe, Mr. Freitas, the home  
13 that you're referring to is probably one of these  
14 residences here. And as you can see, one of those  
15 residences is just barely under a half a mile.  
16 The other is just over a half a mile.

17 Now, one of the kind of rules of thumbs  
18 that's used in visual analysis is to think about  
19 the distance zone, foreground, middle ground and  
20 background.

21 The foreground zone --

22 HEARING OFFICER WILLIAMS: Dr.  
23 Priestley, just let me say that the residences  
24 that are being referred to are the two that are  
25 next to the benchmark 172 on figure --

1 DR. PRIESTLEY: Yeah, that's right, just  
2 south of Manning Avenue and this road right here,  
3 Mr. Freitas, would be?

4 MR. FREITAS: That would be Yuba.

5 DR. PRIESTLEY: Yuba, that they will be  
6 on Yuba just south of the corner of Manning.

7 HEARING OFFICER WILLIAMS: Thank you.

8 DR. PRIESTLEY: And they would be a half  
9 a mile putting them in the middleground distance  
10 zone, which is a zone in which the level of  
11 sensitivity effects on views is considered to be  
12 considerably lower than something, you know,  
13 close.

14 MR. FREITAS: I'm sorry, I didn't get  
15 that answer. Did you answer my question?

16 HEARING OFFICER WILLIAMS: His question  
17 was whether the views from -- the sunset views to  
18 the west would be obstructed by the project.

19 MR. FREITAS: The plumes or the towers.

20 DR. PRIESTLEY: I did not do a specific  
21 analysis of views from this house, and, you know,  
22 the angles at which the sun would be setting.

23 You know, clearly when you're looking  
24 toward the sunset one would at least see the power  
25 plant in the view of the setting sun. The extent

1 to which there would be any obstruction of that  
2 view is not clear.

3 But something to keep in mind is the  
4 fact that you are a half a mile away at this  
5 point, and you have to think about, well, what  
6 relative size is this facility in the total view,  
7 what percentage of the total view does it occupy.

8 MR. FREITAS: I'll take that as an  
9 answer. Dr. Priestley, since you're up there  
10 maybe we could just go to the next one. Is it  
11 your experience -- I take it you've done a lot of  
12 this landscaping? You've done a lot of  
13 landscaping, am I correct?

14 DR. PRIESTLEY: I've done a lot of  
15 analyses of the visual effects of power plants and  
16 other large facilities. And I've done studies --

17 MR. FREITAS: Have you actually done  
18 landscape design?

19 DR. PRIESTLEY: Yeah, I am -- although I  
20 have two degrees in landscape architecture, and  
21 I'm also a Member of the American Society of  
22 Landscape Architects, I do not bill myself as a  
23 landscape designer.

24 MR. FREITAS: Okay. As drawing from  
25 your professional references, is it your



1 experience that it's better to place a cluster  
2 that represents the entry to a site such as this  
3 into a city a mile or two miles away from the  
4 actual entrance to the city?

5 Because I don't know if you noticed  
6 there that the distance between where your cluster  
7 is -- and I think maybe you can point it out for  
8 us. Could you just point out on that map to the  
9 right, on that layout to the right, could you just  
10 visually point out where your cluster is right  
11 there at the -- yeah, right there, versus where  
12 Manning is back there?

13 DR. PRIESTLEY: But you might also note  
14 that, in fact, Calpine has proposed grading a  
15 landmark entry along Manning, as well.

16 MR. FREITAS: Yeah, I understand that, a  
17 landmark entry. And I do have palm trees on most  
18 of my properties in San Joaquin that are 60 feet  
19 higher or better. And they're very skinny, and  
20 those palm trees offer absolutely no visual  
21 distraction, unless it's proposed by the applicant  
22 to put palm trees within five inches of each  
23 other.

24 DR. PRIESTLEY: Yeah, I might add there  
25 are many varieties of palm trees, and if you --

1 one of the aspects of Vis-2 that we didn't go over  
2 is the fact that as a part of Vis-2 we are  
3 required to be working with a professional  
4 arborist who will help us to select trees that  
5 would be -- that first of all, do well in this  
6 location; and secondly, would be effective in  
7 achieving the objectives that we have -- set of  
8 objectives that we have set out to do, so we would  
9 obviously not choose the 60-foot-high palm trees.  
10 We'd choose another species that would kind of do  
11 the job that we have in mind.

12 MR. FREITAS: I'm a reasonable man,  
13 Doctor, and I believe everybody in this room is  
14 pretty reasonable in their thinking. Is it  
15 reasonable to assume that you can -- and I'm not  
16 asking you to do the unreasonable thing here, I  
17 know you have a tough job -- but is it reasonable  
18 to assume that you can use trees and landscaping  
19 to blot out a project of this size?

20 DR. PRIESTLEY: Yeah, I don't know  
21 whether, you know, necessarily blocking out is the  
22 entire objective.

23 MR. FREITAS: Just answer the question.

24 (Laughter.)

25 MR. FREITAS: Can you just answer the

1 question?

2 DR. PRIESTLEY: Yeah, I think I did.

3 MR. FREITAS: No, that's your opinion of  
4 what you think it is. I asked you, can you blot  
5 out with landscaping, can you blot out a project  
6 of this size? I mean it's reasonable.

7 HEARING OFFICER WILLIAMS: Well, --

8 MR. FREITAS: I would say you can't.

9 HEARING OFFICER WILLIAMS: -- Mr.  
10 Freitas, I don't think your terminology is  
11 reasonable --

12 MR. FREITAS: Of blot out?

13 HEARING OFFICER WILLIAMS: Yes.

14 MR. FREITAS: Okay.

15 HEARING OFFICER WILLIAMS: Blot out. I  
16 mean, if you could --

17 MR. FREITAS: All right, let's say this.

18 Okay, --

19 HEARING OFFICER WILLIAMS: -- maybe --

20 MR. FREITAS: -- can you effectively,  
21 can you effectively offset the negative visual  
22 impacts with landscaping? Is that more  
23 professional?

24 HEARING OFFICER WILLIAMS: Yeah. It's  
25 not a question of professional, but, you know,

1 blot out suggests that --

2 MR. FREITAS: I understand.

3 HEARING OFFICER WILLIAMS: -- something  
4 totally different --

5 MR. FREITAS: I was trying to say --  
6 that's why I prefaced that statement with  
7 reasonable minds, because I figured we could  
8 reason in that blot out doesn't mean -- but, what  
9 I'm trying to say, Mr. Williams, --

10 HEARING OFFICER WILLIAMS: You got to be  
11 a little bit more specific.

12 MR. FREITAS: Okay, what I'm trying to  
13 say, Mr. Williams, I'll cut right to the bear's  
14 bullet. If you look at this --

15 HEARING OFFICER WILLIAMS: What are you  
16 holding there?

17 MR. FREITAS: I'm holding up figure 14.  
18 If you look at that digitally digitized figure 14  
19 it almost looks like the Bellagio in Vegas, the  
20 landscaping around the Bellagio in Vegas.

21 But if you look at those pictures that I  
22 took of the two cogen plants in Chowchilla who  
23 tried to accomplish visual impact offsets with  
24 eucalyptus tree landscaping, you can see how  
25 ineffective it is.

1           And I'd like Dr. Priestley to now view  
2       those pictures that we have put into evidence,  
3       just take a quick look at those, a scan of those.  
4       And tell me -- and those trees there on that  
5       location, I believe, are at least ten years old.

6           HEARING OFFICER WILLIAMS:  The pictures  
7       have been identified as exhibit 5B-1 through 15.

8           (Pause.)

9           HEARING OFFICER WILLIAMS:  Do you  
10      understand the question, --

11          DR. PRIESTLEY:  Well, I just looked -- I  
12      looked at the pictures but I'm not exactly sure of  
13      what the --

14          MR. FREITAS:  Maybe I haven't asked the  
15      question yet.  I just wanted you to review those  
16      pictures.  And then I'll refine the question for  
17      you.

18          DR. PRIESTLEY:  Okay, and I'm wondering  
19      if I could ask a question, just as a point of  
20      clarification?

21          MR. FREITAS:  Absolutely.

22          DR. PRIESTLEY:  Yeah, I'm personally not  
23      familiar with this particular project.  And I'm  
24      wondering if the CEC Staff can tell us whether or  
25      not this is an Energy Commission project, and has

1       been subject to the level of kind of scrutiny that  
2       a Energy Commission project would receive.

3               MR. TRASK: I can state that it is not  
4       an Energy Commission project.

5               HEARING OFFICER WILLIAMS: Okay, for the  
6       record, your pictures do not depict a facility  
7       that was certified by the California Energy  
8       Commission.

9               MR. FREITAS: Okay. You think the trees  
10      know the difference?

11              ASSOCIATE MEMBER GEESMAN: I think the  
12      point of the observation, Mr. Freitas, is that  
13      there may be more trees or different trees in a  
14      California Energy Commission-certified project  
15      than a project that has not gone through our  
16      process.

17              MR. FREITAS: Thank you. That's what I  
18      was looking for.

19              HEARING OFFICER WILLIAMS: Okay, you may  
20      continue.

21              MR. FREITAS: Dr. Priestley, are you  
22      familiar with the hearing that took place in front  
23      of the Fresno County Board of Supervisors back  
24      sometime in January of 1999 or 2000 when the  
25      applicant first made proposals to site the plant

1 in the City of San Joaquin? And when the City of  
2 San Joaquin did not have this 83 acres annexed  
3 into its sphere of influence?

4 And they made application with the  
5 County of Fresno to include this and annex this  
6 property and sidestep LAFCO to annex this 83 acres  
7 based on the anticipation that Calpine was coming  
8 to this site?

9 Are you familiar with that hearing?

10 MR. HARRIS: He can answer, but I'm  
11 going to object to the question as assuming a  
12 whole lot of facts that aren't --

13 MR. FREITAS: It has relevance.

14 MR. HARRIS: -- in evidence.

15 MR. FREITAS: It has relevance, Jeff.

16 MR. HARRIS: Okay.

17 MR. FREITAS: I'll bring it in.

18 MR. HARRIS: Okay.

19 MR. FREITAS: I'll bring it in. The  
20 relevance is that --

21 HEARING OFFICER WILLIAMS: Well, he said  
22 he can answer the question.

23 MR. FREITAS: Okay.

24 DR. PRIESTLEY: Yeah, in any case I am  
25 not familiar with that hearing.

1           MR. FREITAS: Okay. Well, at that  
2           hearing, Deran Koligian, the Honorable Board of  
3           Supervisor of that hearing, made a statement on  
4           the record that said that Fresno County was no  
5           longer going to allow county pockets to be created  
6           in new annexations.

7           And what he was referring to was the  
8           property that's adjacent to this project. It's a  
9           2.65-acre project owned by my mother. And it's  
10          adjacent to this project.

11          And in essence your proposal and your  
12          landscape design suggests that that parcel, if you  
13          were to look at your landscape, suggests that that  
14          parcel is not part of the annexed industrial park  
15          of the City of San Joaquin, or part of that 83  
16          acres.

17          HEARING OFFICER WILLIAMS: Could you  
18          point us to a figure or picture? Could you  
19          describe what you're telling us?

20          MR. FREITAS: Yes. We can actually use  
21          this -- I think maybe you have this. Don't you  
22          have this one already?

23          DR. PRIESTLEY: That's this one right  
24          here.

25          MR. FREITAS: Oh, you just can't see it



1 as pronounced. Right here, Mr. Williams.

2 HEARING OFFICER WILLIAMS: Can you, so  
3 everybody can --

4 MR. FREITAS: See right here? Well,  
5 right here.

6 HEARING OFFICER WILLIAMS: Yeah.

7 MR. FREITAS: See how this property,  
8 when they annexed this property they did a full  
9 annexation like this as part of a whole industrial  
10 park, included all this in the industrial park.

11 HEARING OFFICER WILLIAMS: You need to  
12 say that on the record.

13 ASSOCIATE MEMBER GEESMAN: We need to  
14 capture that on the record.

15 MR. HARRIS: Yeah, I think so.

16 (Laughter.)

17 MR. HARRIS: Mr. Williams, before Mr.  
18 Freitas proceeds can I ask is this a visual? Are  
19 you on a visual issue now?

20 MR. FREITAS: Yeah, I'm there. I think  
21 it is.

22 HEARING OFFICER WILLIAMS: Why don't you  
23 just describe, using figure VR-128-1, the vicinity  
24 that you just explained to me.

25 MR. FREITAS: Okay. When we were at the

1 Board of Supervisors' meeting we were asked not to  
2 contest the annexation of this property. And  
3 because we didn't contest, Deran Koligian  
4 authorized the approval of the project. And he  
5 had his man stand up and redline in on the map.  
6 Originally when they made the proposal it was  
7 redlined like this to not include our property.

8 But if they did not include our property  
9 in that annexation it would have created a County  
10 pocket, being our property, the County pocket.  
11 This piece and our piece were the only last pieces  
12 left in the County.

13 ASSOCIATE MEMBER GEESMAN: And I believe  
14 you're speaking of the parcel at the intersection  
15 of Manning and Colorado --

16 MR. FREITAS: Manning and Colorado.

17 ASSOCIATE MEMBER GEESMAN: -- on the  
18 northeast or northwest --

19 MR. FREITAS: It would be the southwest  
20 corner of that intersection, of Manning and  
21 Colorado.

22 And so when I saw this map the first  
23 time I was a little bit taken aback because I had  
24 noticed that Calpine had managed to cut us off  
25 again. Be in just visual impact and fencing, it

1 still separates the industrial park away from the  
2 balance of the industrial park, and it cuts out a  
3 piece of it, as so right here at the base.

4 And it doesn't, in my opinion, and I'm  
5 asking you as a professional, it doesn't, in my  
6 opinion, give true justice to pronouncing the  
7 industrial park, itself, and the project in total.

8 You're bringing trees clear over here  
9 off of Manning and Yuba way out here, you're  
10 bringing trees and clustered trees way out here  
11 where there's not as much traffic. And you're  
12 leaving it blank and bare right here at the main  
13 corner of the intersection, the entry into the  
14 City.

15 HEARING OFFICER WILLIAMS: Do you  
16 understand the question, Dr. Priestley?

17 MR. HARRIS: I don't understand the  
18 question, so I --

19 MR. FREITAS: I think he asked Dr.  
20 Priestley, counselor.

21 DR. PRIESTLEY: Well, I understand the  
22 point that was being made. I'm having a hard time  
23 figuring out what part of it is a question, to be  
24 quite honest.

25 MR. FREITAS: Okay, well the part that's

1 a question is what, in your design rationale, went  
2 into excluding that portion of the property as  
3 part of your trees and landscaping?

4 Why wouldn't you automatically include  
5 that portion of the annexed industrial park? If  
6 you're going to include the portions across the  
7 street, and I believe we discussed outside that  
8 would be like \$90,000 to \$100,000 worth of value  
9 of landscaping that's completely detached from the  
10 industrial park, and still leave a blank, create a  
11 blank pocket there for visual impacts right on the  
12 corner of the entry of the most visually impacted  
13 portions of the annexation of the industrial park?

14 MR. HARRIS: Can I ask for  
15 clarification?

16 MR. FREITAS: My question was what his  
17 rationale was, Jeff.

18 MR. HARRIS: Is the question, let me  
19 ask, is the question what's the rationale for  
20 putting the trees on Manning to the north? Is  
21 that the question?

22 MR. FREITAS: Well, I think I asked the  
23 question. What went into the rationale of  
24 designing his overall -- can you answer -- do you  
25 understand?

1 DR. PRIESTLEY: Yeah, let me give you an  
2 answer if I can.

3 MR. FREITAS: I'm not trying to beat --  
4 I'm not trying to say you're a bad guy because you  
5 did it. I'm just asking you why.

6 DR. PRIESTLEY: So, as I indicated  
7 before, we had submitted a landscape proposal as  
8 part of our AFC. That proposal, I don't believe,  
9 included this, but it was based on feedback then  
10 from the City of San Joaquin and staff, that we do  
11 something along Manning Avenue.

12 And the City specifically asked us to do  
13 something in this block right here, which for  
14 people -- which has a lot of traffic for people  
15 coming in from Fresno and other points east.  
16 There's like a rationale that this has the largest  
17 number of people coming into town, so that's the  
18 reason why.

19 And on the specific request of the City  
20 the trees were placed here. The City did not ask  
21 us to place any trees on Manning west of Colorado.

22 MR. FREITAS: You answered my question.  
23 So the answer was is that the rationale was that  
24 there was more traffic on Manning. You just  
25 stated for the record that there was more traffic

1 on Manning at that location coming into the City?

2 DR. PRIESTLEY: Well, the answer is that  
3 this was a specific request made to us by the City  
4 of San Joaquin.

5 MR. FREITAS: Okay. Are you changing  
6 your statement, your testimony?

7 DR. PRIESTLEY: And then, you know, the  
8 logic or the rationale is, again if you take a  
9 look at our traffic data, there is a considerable  
10 number, there's a considerable amount of traffic  
11 entering the City from the east.

12 MR. FREITAS: That's all I'm trying to  
13 get at, Dr. Priestley. Okay, back to the question  
14 then, of your rationale behind the design in the  
15 clusters around the power plant for visual impact.

16 Do you believe that the nemesis or the  
17 necessity to design what I used as, I used the  
18 term it looks like the Bellagio, to design  
19 something like this two miles out of town at that  
20 location is something that probably most likely  
21 should have went more closer to the higher traffic  
22 count area, which is actually in the I-5 business  
23 corridor and on Manning and Colorado, which is  
24 more truly the entrance to the City?

25 DR. PRIESTLEY: I guess really my answer

1 to that question is to point out that the  
2 Bellagio-type landscaping that you are referring  
3 to is located on project property. You know, this  
4 is land that is part of the property, and it kind  
5 of sets off the view of the project. That's the  
6 rationale for putting it here.

7 HEARING OFFICER WILLIAMS: And the  
8 Bellagio-type landscaping --

9 (Laughter.)

10 HEARING OFFICER WILLIAMS: -- is located  
11 at Colorado, the intersection of Colorado and  
12 Springfield.

13 DR. PRIESTLEY: Yeah.

14 HEARING OFFICER WILLIAMS: And, Mr.  
15 Freitas' question relates to the apparent lack of  
16 the Bellagio-type landscaping at the intersection  
17 of Manning and Colorado.

18 ASSOCIATE MEMBER GEESMAN: And it's  
19 actually, I don't think, quite as far up as  
20 Manning. It's further up Colorado --

21 HEARING OFFICER WILLIAMS: Right.

22 ASSOCIATE MEMBER GEESMAN: -- almost to  
23 the intersection with Manning.

24 HEARING OFFICER WILLIAMS: Because there  
25 is landscaping at the northern boundary of the

1 property. So Mr. Freitas' question relates to his  
2 property, which is to the north of the landscaping  
3 that the applicant has proposed.

4 MR. FREITAS: Exactly.

5 MR. HARRIS: That intersection --

6 MR. FREITAS: It's not on Manning, it's  
7 off Manning.

8 HEARING OFFICER WILLIAMS: It's off  
9 Manning to the north --

10 MR. FREITAS: Right.

11 HEARING OFFICER WILLIAMS: -- of the  
12 landscaping that the applicant has proposed.

13 MR. FREITAS: Right.

14 MR. HARRIS: Yeah, to be clear, the  
15 applicant's northernmost landscaping is on the  
16 northernmost part of the applicant's property.

17 MR. FREITAS: Right, but that's okay.  
18 It's off Manning. I want to make that clear.

19 Dr. Priestley, did you present to staff,  
20 or did staff have access to, from you, any  
21 documents or anything that would have allowed  
22 staff to assess, when they wrote their staff  
23 assessment, to assess in your visual impacts the  
24 implications of setting out something that was  
25 included in the entire -- another piece of



1 property that was included in the entire  
2 industrial park? In the original annexation.

3 DR. PRIESTLEY: I'm afraid I don't  
4 understand the question.

5 MR. FREITAS: Okay. Let me make it real  
6 simple. The reason that 83 acres of prime  
7 farmland has been annexed into a City zone is for  
8 the purposes of building, on 20 acres of the 83  
9 acres, a power plant that an individual company is  
10 going to profit from.

11 Now, the reason that that 83 acres of  
12 prime farmland was annexed in, the only reason it  
13 was not annexed in is because we did not contest  
14 the annexation. We could have contested the  
15 annexation. We were the only remaining property  
16 owners contiguous to the proposed annexation that,  
17 had we contested it, the annexation could have  
18 been disallowed. Because we would have created a  
19 County pocket. And Supervisor Koligian was not  
20 going to allow any more County pockets to be  
21 created.

22 So, if staff -- I'm not suggesting that  
23 staff may have wrote a different assessment of  
24 their approval of the landscaping, and not  
25 necessarily that they've approved it, but did

1 staff have access to that information to see the  
2 entire impact of the industrial park, comparing  
3 your landscaping, as what I proposed today, that  
4 it should include the entire outline of the  
5 industrial park?

6 HEARING OFFICER WILLIAMS: Mr. Freitas,  
7 that sounds like more appropriately a question for  
8 staff, doesn't it?

9 MR. FREITAS: No. Because staff's going  
10 to say, Mr. Williams, that we don't know if we got  
11 the information from applicant. So that's why I'm  
12 asking the applicant first if he provided that  
13 data and information to staff.

14 Because the applicant in his earlier  
15 testimony, Mr. Williams, if you recall, made note  
16 that it was in staff's recommendation.

17 MR. HARRIS: Can we be off the record  
18 for just a second?

19 HEARING OFFICER WILLIAMS: Let's go off  
20 the record.

21 (Off the record.)

22 HEARING OFFICER WILLIAMS: Okay, the  
23 parties at the break had a chance to discuss Mr.  
24 Freitas' line of questioning. And as I understand  
25 it, Mr. Freitas has no more questions on cross-

1 examination, but he does have a statement that he  
2 wishes to make with respect to visual resources,  
3 is that correct, Mr. Freitas?

4 MR. FREITAS: No, not really, but let me  
5 clear it for you. It's real close to correct. I  
6 want to make one more question to Dr. Priestley  
7 just to establish a point that I made.

8 HEARING OFFICER WILLIAMS: Okay.

9 MR. FREITAS: One final question.

10 HEARING OFFICER WILLIAMS: Okay.

11 MR. FREITAS: And it will be five  
12 seconds.

13 HEARING OFFICER WILLIAMS: Okay.

14 MR. FREITAS: Dr. Priestley, using  
15 figure 7 of visual resources from staff's  
16 assessment, figure 7.

17 DR. PRIESTLEY: I have it in front of me  
18 now, thank you.

19 MR. FREITAS: Considering the line of  
20 sight, and it seems to me it almost is the  
21 furthest away line of sight from all the others,  
22 or maybe equivalent to the same line of sight as  
23 E-1, E-2. And I'm discussing line of sight A.A.

24 MR. HARRIS: A?

25 MR. FREITAS: Yes, .A.

1 DR. PRIESTLEY: Line of sight A, okay, I  
2 see it.

3 MR. FREITAS: It's up there by  
4 California Avenue. Do you see that?

5 DR. PRIESTLEY: I see it.

6 MR. FREITAS: In your opinion, if we  
7 were to -- if Calpine was to add trees west of the  
8 railroad track would it help offset some of the  
9 visual impacts from that line of sight?

10 DR. PRIESTLEY: I guess, you know, by  
11 way of context I should say that this line of  
12 sight is linked to -- these lines of sight on this  
13 figure are linked to some photographs of locations  
14 around town.

15 At a hearing here in San Joaquin CEC  
16 Staff had concerns about views from other parts  
17 of -- other locations in town, other than the four  
18 viewpoints that we had picked for simulations.  
19 And they wanted to be certain that they would not  
20 be adversely impacted by the project.

21 So, as a part of a data request, I  
22 submitted photographs from each of the viewpoints  
23 that you see located here. And then this  
24 accompanied those photographs to indicate the  
25 relationship of those viewpoints to the power

1 plant, just to put those views into some kind of  
2 perspective.

3 So that was really the purpose of this.  
4 So, line of sight A is from the ballfield there,  
5 you know, behind, in the school complex. And --

6 MR. FREITAS: I'm sorry, I'm sorry,  
7 could you bring it to the figure? What figure  
8 that is?

9 DR. PRIESTLEY: We're looking at, yeah,  
10 figure 7, and then there were photographs. And  
11 maybe staff can help me with this.

12 MR. FREITAS: Would it be figure 9 that  
13 represents the view from point A? No.

14 MR. TRASK: It's pretty close to it.

15 DR. PRIESTLEY: Just a second.

16 MR. TRASK: The figures 8 and 9 are both  
17 figures that Mr. Priestley is referring to.

18 MR. FREITAS: No, I don't think so,  
19 Mathew.

20 MR. TRASK: Well, they are both figures  
21 that represent views that were not from the KOPs,  
22 the key observation points.

23 MR. FREITAS: Oh, okay, they're not from  
24 there. Okay.

25 DR. PRIESTLEY: So, one place where I

1 know you can find that figure is in the data  
2 responses. I don't know whether you have those  
3 data responses or not. Data response set 1D. And  
4 in this data response set it would be photo VR-  
5 128-1.

6 MR. FREITAS: Dr. Priestley, I'm sorry,  
7 could I just steer you to -- all I want to do is  
8 see the picture, the figure of the photograph that  
9 shows the line of sight from point A.

10 DR. PRIESTLEY: Yeah, and that again is  
11 in data response set 1D; and it's photo VR-128-1.  
12 I do have a copy of that.

13 MR. FREITAS: So we don't have a photo?

14 MR. TRASK: It's right here.

15 MR. FREITAS: A figure photo --

16 DR. PRIESTLEY: Well, apparently this  
17 photo was not included in the staff assessment.

18 MR. FREITAS: Not included. Okay.

19 (Pause.)

20 MR. HARRIS: So the picture you're  
21 looking at is from exhibit 3K.2.

22 MR. FREITAS: Jeff, --

23 MR. HARRIS: Yeah, 3K-2.

24 MR. FREITAS: Is this one of your  
25 documents? Can I write on it at the top, 3K-2?

1           MR. TRASK: He's referring to the  
2 overall document that that came out, which was  
3 their --

4           MR. FREITAS: Oh, I'm sorry, okay.

5           MR. TRASK: -- data responses.

6           MR. FREITAS: So back to the question.

7 And I think you answered it by saying that the  
8 City of San Joaquin or other community members  
9 were concerned about their visuals, and blocking  
10 those visuals.

11           So my question, again, is, just to get  
12 it clear for the record, I asked you if the same  
13 palm tree landscape design that you've suggested  
14 for east of Manning, east on Manning, east of  
15 Colorado, were extended west on Manning, west of  
16 Colorado, basically I'm suggesting to Railroad  
17 Avenue, which is one more block west, just one  
18 block west of that intersection, would that help  
19 aid in offsetting the visual impacts of line of  
20 sight for the community of San Joaquin?

21           DR. PRIESTLEY: Okay, I'll tell you what  
22 my answer is to that. And that is that, you know,  
23 that's an interesting idea, but there is less of a  
24 nexus with the project and its effects in that in  
25 the area along Manning to the west of Colorado

1 views toward the project site will be screened by  
2 the buildings and industrial activities that would  
3 be in the very immediate foreground on the south  
4 side of the street.

5 And then behind those there will be the  
6 row of eucalyptus trees where along the east side  
7 of Manning Avenue --

8 MR. FREITAS: Wait a minute, wait a  
9 minute, Doctor. You got me confused now. What  
10 industrial buildings would block the line of sight  
11 from the plant?

12 DR. PRIESTLEY: Well, your building,  
13 among others.

14 MR. FREITAS: Okay, Doctor. Are you  
15 aware that there's a clear view line of sight --  
16 and let me just refer you to figure 2 now, project  
17 description figure 2, because that shows some  
18 population densities on it.

19 Now you have some serious population  
20 densities here placed on the west side of Manning  
21 north, just proximate to Railroad Avenue, the site  
22 that I'm discussing.

23 DR. PRIESTLEY: I'm afraid I don't have  
24 a copy of that figure in front of me.

25 MR. FREITAS: So I don't follow your



1 reasoning when you say that less people would be  
2 impacted when the majority part of the old San  
3 Joaquin area, which I've been there for 23 years,  
4 is located west of Railroad Avenue, or west of  
5 Colorado Avenue, north of Manning.

6 And that my suggestion to put the palm  
7 trees up to Railroad Avenue clearly, in my  
8 opinion, would block a tremendous amount of line  
9 of sight from residences.

10 There's a direct -- just so you know for  
11 your information, I don't know if you noticed it  
12 or not, or noted, if you were to drive down  
13 Railroad Avenue northbound and look back at the  
14 project you could see right past my building,  
15 right through Millennium's building, right past  
16 Millennium's building and see the power plant.  
17 I've driven that road many years, for many years.

18 There's a clear line of sight down  
19 Railroad Avenue looking southbound from the north.  
20 So I can show you up here. See this population  
21 density here, this population area here?

22 HEARING OFFICER WILLIAMS: The record  
23 should reflect that Mr. Freitas is describing,  
24 based upon figure VR-128-1.

25 MR. FREITAS: If you were to shoot an

1 arrow from a bow-and-arrow, down Railroad Avenue,  
2 the trajectory would be like this. Okay?

3 And all these residences here and all  
4 along here are impacted by that. Now, these  
5 residences here could be blocked by this, but as  
6 you get further out, as the stacks are higher and  
7 you get further out, I thought that's what the  
8 whole trajectory thing was from the point of  
9 sight, line of sight.

10 Am I wrong, Dr. Priestley? That if you  
11 get further out from the stacks, that your line of  
12 sight is not -- these buildings would not obscure  
13 your view from towers that stand up higher, stacks  
14 that stand up higher than the buildings?

15 Is it your testimony that you could come  
16 right here at this corner and look across here and  
17 not see the stacks, because this building will  
18 block your view?

19 DR. PRIESTLEY: I guess my testimony is  
20 the analysis that you can see in the AFC related  
21 to KOP4, which is fairly typical of views from the  
22 residential community on the west side of San  
23 Joaquin in which the project facilities are a  
24 relatively small feature in the scene in the  
25 distance, with other facilities in the foreground.

1           You know, what I can say is that your  
2   idea of, you know, planting trees on Manning to  
3   the west side of Colorado would certainly create a  
4   feature that's very attractive there. It would  
5   improve the appearance of that area, and, you  
6   know, to some minor extent, would help to improve  
7   the views toward the facility.

8           But I don't think --

9           MR. FREITAS: Thank you, Doctor.

10          DR. PRIESTLEY: -- necessarily  
11   required --

12          MR. FREITAS: Thank you, Doctor.

13          Now I'll just what, make my statement?  
14   Or do you think that's necessary? Think we got  
15   enough out, or --

16          ASSOCIATE MEMBER GEESMAN: I'd like to  
17   hear it.

18          MR. FREITAS: Make my statement. Okay,  
19   I guess we're not going to stip so I'll just make  
20   a statement.

21          That I think with the testimony today  
22   that the Commissioners should consider in their  
23   decision-making process that, not only for the  
24   matter of beautification issues, but for visual  
25   impacts, that it would be reasonable to have

1 applicant extend the landscaping with palm trees  
2 west of Colorado on Manning Avenue at least to  
3 Railroad intersection, which would be one block.

4 HEARING OFFICER WILLIAMS: Does that  
5 conclude your statement?

6 MR. FREITAS: That concludes my --

7 HEARING OFFICER WILLIAMS: Okay, thank  
8 you.

9 MR. FREITAS: Thank you.

10 HEARING OFFICER WILLIAMS: Does that  
11 conclude your cross-examination?

12 MR. FREITAS: Yes.

13 HEARING OFFICER WILLIAMS: Okay.  
14 Applicant, do you have any redirect?

15 MR. HARRIS: God, no. I'd just like to  
16 move joint 1 and joint 2. We already moved those  
17 documents, I believe.

18 HEARING OFFICER WILLIAMS: Yes.

19 MR. HARRIS: Okay.

20 MR. TRASK: Can we go off the record  
21 just for a second?

22 HEARING OFFICER WILLIAMS: Yes, off the  
23 record.

24 (Off the record.)

25 MR. KRAMER: As to joint 2, upper

1 management reviewed that and had one suggestion  
2 for a change. Mr. Harris has agreed to include  
3 this in the revised --

4 MR. HARRIS: It's joint 1; it's Vis-2,  
5 joint 1.

6 MR. KRAMER: Okay, joint 1, I'm sorry.  
7 In the body of the condition it refers to sending  
8 some plans to the City for review and comment.  
9 And then to the CPM for review and approval.

10 In the verification it only mentions the  
11 CPM, so we want to add that City aspect to that.  
12 And he'll take care of that when he reprints it,  
13 along with the other changes he was going to make.

14 HEARING OFFICER WILLIAMS: That's  
15 acceptable?

16 MR. HARRIS: That's acceptable. With  
17 the verification we'll add the language to the  
18 City of San Joaquin for review and comment.

19 HEARING OFFICER WILLIAMS: Okay. Thank  
20 you. With that, then, we'll move along to staff's  
21 presentation --

22 MR. FREITAS: Was there some input that  
23 I needed to make on that last little digit we just  
24 did there?

25 HEARING OFFICER WILLIAMS: No, unless

1       you want to.  It's primarily --

2               MR. FREITAS:  Well, it sounds like to me  
3       a way to waiver out the ability to have to put  
4       trees there if the City of San Joaquin says it's  
5       not necessary.

6               MR. FREITAS:  No, I'm sorry, --

7               DR. CHUNG:  Is that what that was meant  
8       for or --

9               MR. HARRIS:  No, it's a review.  They  
10       get to comment just like any other people.  
11       Approval is still with the Commission.

12              MR. FREITAS:  So if their comment is  
13       that trees are not necessary, then that'll impact  
14       the decision of the Commission?

15              MR. KRAMER:  It will be considered, but  
16       the CPM may or may not accept their comments.

17              MR. TRASK:  Ultimate approval remains  
18       with the Commission and the CPM.

19              MR. FREITAS:  As long as that's --

20              HEARING OFFICER WILLIAMS:  With that  
21       clarification --

22              MR. FREITAS:  Thank you.

23              HEARING OFFICER WILLIAMS:  Okay.  Staff.

24              MR. KRAMER:  We have nothing to offer  
25       aside from the assessment we were already going to

1 move into evidence. So, unless -- and I think  
2 we're past cross-examination, right?

3 HEARING OFFICER WILLIAMS: I think you  
4 need to swear your witnesses so that they can  
5 address the question that Mr. Freitas had about  
6 the compliance.

7 MR. KRAMER: That's correct, if he still  
8 has that question. So, let's have the witnesses  
9 sworn, please.

10 Whereupon,

11 DALE EDWARDS and KENNETH PETERSON  
12 were called as witnesses herein, and after first  
13 having been duly sworn, were examined and  
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MR. KRAMER:

17 Q Okay, beginning with Mr. Peterson,  
18 please state your full name and spell your last  
19 name for the record.

20 MR. PETERSON: Kenneth Peterson,  
21 P-e-t-e-r-s-o-n.

22 MR. KRAMER: And, Mr. Edwards.

23 MR. EDWARDS: Dale Edwards, D-a-l-e  
24 E-d-w-a-r-d-s.

25 MR. KRAMER: Can I have a stipulation as

1 to their qualifications to testify regarding this  
2 subject area?

3 MR. HARRIS: Yes, we so stipulate.

4 MR. KRAMER: Mr. Freitas, do you  
5 stipulate as to their qualifications?

6 MR. FREITAS: I'm sorry. Yes.

7 MR. KRAMER: Okay, and we've already  
8 offered their testimony into evidence, so we will  
9 simply offer them for cross-examination.

10 MR. HARRIS: We have no questions.

11 HEARING OFFICER WILLIAMS: Okay, Mr.  
12 Freitas.

13 CROSS-EXAMINATION

14 BY MR. FREITAS:

15 Q Since I don't know your backgrounds,  
16 could you gentlemen just synopsis it real quick?  
17 What do you specialize or do?

18 MR. PETERSON: I work as a planner in  
19 the environmental unit, visual, transportation and  
20 land use. I have a background in urban planning,  
21 land use analysis and working in all three of  
22 these areas.

23 MR. EDWARDS: For the last four years  
24 I've supervised the cultural, visual and  
25 socioeconomics unit, and in that regard have been



1       intimately involved in the use of and modification  
2       of the visual resource impact modeling -- or  
3       rather, well, modeling as well as the methodology,  
4       rather, is what I meant to say.

5               MR. FREITAS:  You both sat in on the  
6       testimony of Dr. Priestley today, my cross-  
7       examination?

8               MR. EDWARDS:  Yes.

9               MR. FREITAS:  You understood most all  
10      of -- if not most of it, but --

11              MR. EDWARDS:  Right.

12              MR. FREITAS:  Do you have any input as  
13      to what -- would it be consistent with my proposal  
14      to extend the landscaping west of Colorado up to  
15      Railroad Avenue, would it help with visual  
16      impacts, to offset visual impacts, in your  
17      opinion?

18              MR. PETERSON:  In my opinion would it  
19      help with visual impact.  In considering the point  
20      that you were referring to, point A on figure 7,  
21      my final analysis was that from point A there was  
22      not an impact because of the buildings interceding  
23      between point A and the site.

24              So we didn't see a need to do anything  
25      to mitigate from point A.

1                   MR. FREITAS: How about you? Dale  
2 Edwards.

3                   MR. EDWARDS: Well, actually the way we  
4 did this analysis, for the most part, was Mr.  
5 Peterson did the visual analysis as it relates to  
6 the power plant structures. And I did the plume  
7 analysis. So if you want to ask a structural  
8 question, you'd best ask Mr. Peterson.

9                   MR. FREITAS: But the plume analysis  
10 dealt with visual, the effects of the plume?

11                  MR. EDWARDS: That's correct.

12                  MR. FREITAS: Now, how about your  
13 opinion as to landscaping with higher palm trees  
14 at that location for as far as it affects the  
15 visual plume?

16                  MR. EDWARDS: Well, speaking kind of  
17 jointly for both Mr. Peterson and myself, the  
18 mitigation that's been agreed to with the  
19 applicant in this case, in our opinion, mitigates  
20 the impact of the power plant consistent with CEQA  
21 in our analysis.

22                  MR. PETERSON: Yes, I concur with that.

23                  MR. FREITAS: You concur with that?

24                  MR. PETERSON: Yes.

25                  MR. FREITAS: Okay. Now, with your

1       experience and your backgrounds, if we took away,  
2       let's say we expanded point A, if we took visual  
3       impact point A -- and I think both of you  
4       testified that the buildings that were between the  
5       line of sight at the end of point A, which would  
6       be the northern end of point A, to the power  
7       plant, you say that there's buildings in there,  
8       located in there?

9               MR. PETERSON:  Yeah, if you notice the  
10       blue sight lines from point A to the proposed  
11       project facilities, you'll see that they pass  
12       through existing buildings.

13              MR. FREITAS:  Okay.  Let's go to point  
14       D.

15              MR. PETERSON:  Yes.

16              MR. FREITAS:  You see point D there?

17              MR. PETERSON:  Um-hum.

18              MR. FREITAS:  And let's just stretch a  
19       span west in a northwesterly kind of an arc.

20              MR. PETERSON:  Um-hum.

21              MR. FREITAS:  And just kind of come  
22       right up to Colorado Avenue.

23              MR. PETERSON:  Yes.

24              MR. FREITAS:  Do you realize that there  
25       are no buildings of any size or structure that

1 would block the direct visual view of that power  
2 plant in that arc?

3 MR. PETERSON: Well, point D is a point  
4 that we were concerned about, as you can see, if  
5 you were to look at page 8 of our staff  
6 assessment. We include that point as a point of  
7 concern. And the landscaping, as now proposed,  
8 now agreed to, we think mitigates from that point.

9 As you get further to the west you'll  
10 see there are some buildings in white as you'll  
11 see there. And there are some built structures  
12 and --

13 MR. FREITAS: They're very low, single  
14 story structures. They aren't even the size of a  
15 house.

16 MR. PETERSON: Understand. But at the  
17 same time you've got quite a bit more distance as  
18 you move to the west from the plant.

19 MR. FREITAS: Right.

20 MR. PETERSON: So that was the way we  
21 analyzed that.

22 MR. FREITAS: So if you were to arc  
23 across here and consider the impact, the visual  
24 impact from arcing across from D over to Colorado  
25 Avenue or to Main Street there, --

1 MR. PETERSON: Um-hum, yes.

2 MR. FREITAS: -- in this arc right here.

3 MR. PETERSON: Yes.

4 MR. FREITAS: If you look at that you'll  
5 notice that there is an empty field, two empty  
6 fields all the way over to Colorado Avenue.

7 MR. PETERSON: Um-hum. There are also  
8 some structures and low-level, I concur, but at  
9 the same time there's more and more distance as  
10 you look to the west.

11 MR. FREITAS: But there's absolutely no  
12 structure blocking the line of sight from line of  
13 sight point A all the way through if you follow it  
14 down, see right here, if you follow it down all  
15 the way, there's absolutely no structure, no  
16 building whatsoever in that line of sight all the  
17 way up to the corner of Main Street and Nebraska.  
18 This is Nebraska right here. There's no buildings  
19 there. From right here to right there inside that  
20 arc.

21 MR. PETERSON: Those are just trees,  
22 yeah.

23 MR. EDWARDS: Maybe I could restate what  
24 I said a few minutes ago, that staff's analysis  
25 looked at what the impact of the structures would

1 be from these key observation points, which did  
2 not include point A because it was looked at  
3 specifically and determined not to have direct  
4 views of the site. And that's agreed.

5 MR. FREITAS: That's fair. Staff's  
6 assessment also did not have the testimony from  
7 today, is that correct?

8 MR. EDWARDS: That's correct.

9 MR. FREITAS: For the record?

10 MR. EDWARDS: But what staff did do is  
11 look at the four key observation points, which  
12 were meant to be representative locations for the  
13 City of San Joaquin, itself, and other points  
14 outside of the City which were entering the City  
15 on Colorado Avenue.

16 And considering the impact of the  
17 project, itself, to mitigate it to a level of less  
18 than significant, with the trees that are now  
19 designed or specified by condition Vis-2, staff is  
20 in a position now where we believe that the  
21 mitigation that's incorporated in Vis-2 is  
22 sufficient to bring the level of impact, for the  
23 entire project upon the whole area, to a level of  
24 less than significant.

25 MR. FREITAS: I'd like to condition that

1 statement for the record and on the record. And I  
2 want to note Dr. Priestley's testimony where he  
3 stated earlier that there were other community  
4 members from San Joaquin that had issues with the  
5 impacts, the visual impacts of this project, from  
6 that location, that would have been located inside  
7 that arc. Or, I take that back, strike that.  
8 From the City overall residential district.

9 So if the staff assessment did not have  
10 that information at hand when they made their  
11 determination, then it's fair to assume that the  
12 determination you made is correct, based on the  
13 information you had to work with.

14 MR. EDWARDS: Well, you're speaking to  
15 so many individuals I don't know if you're talking  
16 about their residences, as they're driving  
17 someplace, or where they're at. What's their  
18 location that you're speaking to that they have a  
19 concern about?

20 MR. FREITAS: I --

21 ASSOCIATE MEMBER GEESMAN: Maybe I can  
22 shorten this. Is there anything either of you two  
23 gentlemen have heard today that would cause you to  
24 change your assessment as to the adequacy of the  
25 visual resource conditions that you jointly

1 proposed with the applicant?

2 MR. PETERSON: No.

3 MR. EDWARDS: No.

4 MR. FREITAS: Thank you. That's all I  
5 have.

6 HEARING OFFICER WILLIAMS: Now, what  
7 about the question that you had about  
8 verification? Or, excuse me, compliance.

9 MR. FREITAS: I'm sorry, I think we made  
10 a stipulation to accept Vis-2 or Vis-7. And I  
11 didn't see the word compliance in there anywhere  
12 in those two stipulated proposed statements.

13 MR. PETERSON: Okay, for that you can  
14 look at the --

15 MR. FREITAS: Is there a reference to  
16 compliance somewhere in there?

17 MR. PETERSON: Well, yes. If you look  
18 at, actually, the very last paragraph on the Vis-  
19 2, starting with, After the start of commercial  
20 operation. Basically what this paragraph says is  
21 that the Commission Staff have the right to  
22 inspect landscaping after operation starts to make  
23 sure that the plan was put into effect as written.

24 MR. FREITAS: (inaudible) -- I'm sorry.  
25 I was --



1 MR. PETERSON: Yeah, that last  
2 paragraph, starting with, After the start of  
3 commercial operation.

4 MR. FREITAS: Right.

5 MR. PETERSON: That's the paragraph that  
6 allows us, the Commission Staff, to inspect the  
7 landscaping efforts put in place to make sure that  
8 they really kept to the plan as agreed to. That's  
9 the compliance paragraph.

10 MR. EDWARDS: I want to add one thing to  
11 that. The Commission Staff always has the right  
12 to inspect properties, sometimes with notice,  
13 sometimes without notice, under our compliance  
14 program. And it doesn't take a statement like  
15 this, in this condition, to do that.

16 Just a clarification.

17 MR. HARRIS: And further clarification.  
18 We'll stipulate that we are bound by the terms of  
19 the conditions legally.

20 HEARING OFFICER WILLIAMS: Does that --

21 MR. FREITAS: Yeah, thank you.

22 HEARING OFFICER WILLIAMS: Okay. So,  
23 anything further? Okay, are we prepared to close  
24 out visual? Well, no, no, no, --

25 MR. FREITAS: Guess you get some and you

1       lose some.

2               HEARING OFFICER WILLIAMS:  Let's  
3       introduce your pictures.  Why don't you -- well,  
4       if they haven't --

5               MR. FREITAS:  Okay.

6               HEARING OFFICER WILLIAMS:  -- any  
7       objection to --

8               MR. FREITAS:  Maybe I can even go on the  
9       record with a short statement as to why the  
10      pictures were bring introduced.

11              HEARING OFFICER WILLIAMS:  Okay, well,  
12      yeah, that would be appropriate right now.

13              MR. FREITAS:  Okay.  Are we on the  
14      record?

15              MR. TRASK:  Yes.

16              ASSOCIATE MEMBER GEESMAN:  Yes.

17              MR. FREITAS:  The reason that I stopped  
18      and took a picture of those was twofold.  I took a  
19      picture of those two; those are two pictures, the  
20      pictures I'm proposing in my exhibit 5B-1 through  
21      16 or 15 --

22              HEARING OFFICER WILLIAMS:  15.

23              MR. FREITAS:  -- 15, were pictures that  
24      I stopped in the City of Chowchilla, California,  
25      which is a place where there's two cogen plants

1 located. And we've already, on the record,  
2 determined that they were not CEC-sanctioned cogen  
3 plants.

4 But for the record we can also state  
5 that they were local-approved, or I don't know the  
6 right word, regulated, locally regulated for --

7 MR. TRASK: Approved is fine.

8 MR. FREITAS: -- approved, local  
9 approved. The distinction I think I was probably  
10 trying to make was that of the importance of  
11 having the CEC involved with that process. And  
12 how you could, even though it looks like, and I  
13 refer to it as a Bellagio landscape, have an  
14 opportunity to see landscape actually affect, have  
15 an effective outcome.

16 Whereas those pictures will depict how  
17 landscape has an ineffective outcome on visual  
18 impacts of a project.

19 And the second reason is that even when  
20 they put a fence -- you can see that there was a  
21 fencing system put in place, because the landscape  
22 probably failed in its ability to be able to  
23 offset visually the impact of the power plant. So  
24 they went in and attempted, with a steel fence 25  
25 feet high with slats in it, to try to offset the

1 visual impacts. Kind of even made it worse.

2 And along with that the caveat is that  
3 the trees that they picked, you can see through  
4 those pictures, it's clear to see that some of the  
5 trees are deciduous pines or they were trees that  
6 should not have been placed in that environment,  
7 in that ground, in that soil type.

8 And that would be one of my suggestions  
9 to the Committee and staff and to the applicant,  
10 to make sure that trees are picked that are  
11 indigenous to that area, and that are capable of  
12 surviving the weather, the different climatic  
13 changes, because you can see that those pictures  
14 there, it's obvious that the eucalyptus trees,  
15 too, especially that they used, doesn't work.

16 HEARING OFFICER WILLIAMS: Does that  
17 conclude your statement?

18 MR. FREITAS: One more item. I'd also  
19 like to suggest and add that the landscaping  
20 include a varietal mix of fruit trees, or fruit-  
21 bearing trees, so that there could be additional  
22 beneficial gain added to the community where they  
23 could go and harvest some of the fruit.

24 HEARING OFFICER WILLIAMS: Does that  
25 conclude it?

1 MR. FREITAS: That's it.

2 HEARING OFFICER WILLIAMS: Anything  
3 further? Applicant?

4 MR. HARRIS: (Negative head nod.)

5 HEARING OFFICER WILLIAMS: Staff?

6 MR. KRAMER: No.

7 HEARING OFFICER WILLIAMS: Okay, then  
8 we'll close out visual.

9 MR. FREITAS: Are we going home?

10 ASSOCIATE MEMBER GEESMAN: No, we've got  
11 noise, still.

12 MR. HARRIS: Yes.

13 MR. FREITAS: Oh, come on.

14 UNIDENTIFIED SPEAKER: Yeah, we're going  
15 home, go ahead.

16 (Laughter.)

17 ASSOCIATE MEMBER GEESMAN: Actually,  
18 it's up to the applicant, I believe.

19 MR. FREITAS: You know, Mr. Geesman, the  
20 appropriate thing to have done was to stand up and  
21 say, yeah, we're all going. And then when Freitas  
22 left the building, you could come back and finish  
23 noise.

24 ASSOCIATE MEMBER GEESMAN: No, I think  
25 we're down to the applicant's cross-examination of

1 the staff's noise witnesses.

2 MR. FREITAS: Man, this whole day was  
3 for me.

4 HEARING OFFICER WILLIAMS: No, no.

5 (Pause.)

6 HEARING OFFICER WILLIAMS: Okay, we're  
7 now going to turn to applicant's cross-examination  
8 noise.

9 MR. WHEATLAND: I'm going to ask some  
10 questions today about the staff's prepared  
11 testimony, the FSA. And then I'll spend a little  
12 bit of time with exhibit 2M. My goal, though, is  
13 to complete in time so we can all go home for  
14 dinner.

15 Whereupon,

16 JIM BUNTIN, BILL THIESSEN and STEVE BAKER  
17 were recalled as a witness herein, and after first  
18 having been duly sworn, were examined and  
19 testified further as follows:

20 CROSS-EXAMINATION

21 BY MR. WHEATLAND:

22 Q Mr. Thiessen, your name is at the top of  
23 the FSA and the supplement. Is it fair to say  
24 you're the principal author?

25 MR. THIESSEN: Yes, sir.

1 MR. WHEATLAND: Now, in your statement  
2 of qualifications you identify yourself as a  
3 member of the Institute of Noise Control  
4 Engineering. Are you a Board-certified member?

5 MR THIESSEN: No.

6 MR. WHEATLAND: And you have listed  
7 publications and presentations. Are any of these  
8 that are listed here publications, or are they all  
9 presentations?

10 MR. KRAMER: Excuse me, didn't we  
11 stipulate to the qualifications of the witness  
12 yesterday?

13 MR. WHEATLAND: Oh, I'm not questioning  
14 his qualifications. He's certainly an expert.  
15 But I'm just trying to find out if he's published  
16 any papers.

17 MR. KRAMER: Okay.

18 MR. WHEATLAND: I'm not going to  
19 question his qualifications as a witness, but I'd  
20 like to know if he's ever published a paper.

21 MR. KRAMER: I withdraw my objection.

22 MR THIESSEN: They're presentations.

23 MR. WHEATLAND: Mr. Buntin, are you Mr.  
24 Thiessen's supervisor?

25 MR. BUNTIN: Yes, for this project, yes.

1           MR. WHEATLAND: In your statement of  
2           qualifications you indicate that you began your  
3           involvement in noise assessment in 1972 in the  
4           public sector. Where did you begin?

5           MR. BUNTIN: Kern County Health  
6           Department, Bakersfield.

7           MR. WHEATLAND: And would you just  
8           briefly walk us through your professional  
9           experience from 1972 to 1980.

10          MR. BUNTIN: Let's see, from 1972 to  
11          1977 I was with the Kern County Health Department  
12          in the environmental health division. And I  
13          worked there about the last five years of that, as  
14          one of my chief functions was community noise  
15          specialist, is what we called me, community noise  
16          coordinator. And I was in the land use review  
17          group of the environmental health division.

18          Then in 1977 I came up to Sacramento to  
19          work for the State Solid Waste Management Board.  
20          I was a Manager there, and one of my roles was to  
21          serve as a resource for noise questions facing the  
22          Solid Waste Management Board. Now it's the  
23          Integrated Waste Management Board.

24          1980 I took a position with the  
25          University of California that was called the Grant



1 Coordinator for the EPA Region IX Noise Technical  
2 Assistance Center. Part of my job for a year and  
3 a half was to provide technical assistance and  
4 training for state and local agencies in  
5 California, Arizona, Nevada and Hawaii.

6 MR. WHEATLAND: Okay, thank you. And  
7 then your r, sum, picks up from there. So that  
8 helps us to --

9 MR. BUNTIN: I think so, right.

10 MR. WHEATLAND: -- fill it out. Thank  
11 you very much.

12 You state in your statement of  
13 qualifications that you have managed hundreds of  
14 noise analyses, is that correct?

15 MR THIESSEN: Yes, that's right.

16 MR. WHEATLAND: And is it fair to say  
17 that the majority of those that have been done in  
18 California have involved the interpretation of  
19 CEQA?

20 MR THIESSEN: Probably not the majority  
21 of them, but certainly a fair proportion.

22 MR. WHEATLAND: How many would you say,  
23 just real ballpark? I'm not --

24 MR THIESSEN: Boy, it would be an  
25 estimate. We do an awful lot of work for

1 developments that have already received their  
2 approvals. But the EIR-related work has probably  
3 been maybe a quarter of our workload.

4 MR. WHEATLAND: And of those, have a  
5 substantial portion had to address the question of  
6 whether there is a substantial permanent increase  
7 in the ambient noise levels as defined in appendix  
8 G?

9 MR THIESSEN: Well, since the  
10 publication of appendix G, yes, that's become a  
11 more important question. It was less of a concern  
12 prior to those guidelines.

13 MR. WHEATLAND: So what I'm getting at  
14 is you've had some experience with other clients  
15 in making that analysis for other projects, is  
16 that right?

17 MR THIESSEN: That's correct.

18 MR. WHEATLAND: And have any of those  
19 projects, in any of those projects have you used  
20 the quietest four-hour L90 as the basis for  
21 measuring whether or not there's a substantial  
22 permanent increase in the ambient noise level?

23 MR THIESSEN: Generally not. Most of  
24 the projects that we've worked on have been  
25 related to traffic or primarily aircraft. And in

1       that case we would be using a metric that better  
2       described the noise of those sources, noise  
3       contribution.

4               My chief experience in working with the  
5       L90 is --

6               MR. WHEATLAND:  Oh, no, my question was  
7       just have you done that in any of those?

8               MR THIESSEN:  Not until I came to work  
9       here at the Commission.

10              MR. WHEATLAND:  All right, thank you.  
11       And, Mr. Baker, are you a Board-certified Member  
12       of the Institute of Noise Control Engineering?

13              MR. BAKER:  No, nor have I ever claimed  
14       to be.

15              MR. WHEATLAND:  And are you a member of  
16       the Acoustical Society of America?

17              MR. BAKER:  No, nor have I claimed to  
18       be.

19              MR. WHEATLAND:  Do you have any  
20       professional association with any noise group?

21              MR. BAKER:  No, and I have never claimed  
22       such.

23              MR. WHEATLAND:  And have you published  
24       any papers in the area of noise?

25              MR. BAKER:  No, I have not.

1           MR. WHEATLAND: Turning now to the  
2 testimony, yesterday Mr. Buntin explained to us  
3 the difference between background and ambient  
4 noise levels. And I ask this first question truly  
5 just to understand the staff's testimony.

6           On page 4.6-2 you quote appendix G which  
7 says in pertinent part, that a significant effect  
8 from noise may exist if there's a substantial  
9 permanent increase in ambient noise levels in the  
10 project vicinity.

11          Below that staff states that in applying  
12 this item, this is actually section C that I just  
13 quoted, to the analysis of this and other  
14 projects, the staff concludes that a potential for  
15 significant noise impact exists where the noise of  
16 the project, plus the background, exceeds the  
17 background by five to ten dba, L90, at the nearest  
18 sensitive receptor.

19          Now, appendix G uses the term ambient.  
20 The staff here has twice used the term background.  
21 And I don't know who to direct this to. Do you  
22 have a suggestion, Mr. Kramer? But, I'd like to  
23 know whether the staff intended to use the word  
24 background or ambient in this sentence.

25          MR. BAKER: I believe the sentence is

1 correct as published.

2 MR. WHEATLAND: So you intended to use  
3 the word background. Okay, that's fine.

4 Now, in the next sentence you state,  
5 increases in ambient noise levels that are over  
6 ten dba are considered clearly significant.

7 Did you intend to use the term ambient  
8 or background?

9 MR. BAKER: I believe the text, as  
10 published, is correct.

11 MR. WHEATLAND: Why do you consider  
12 increases based on background for under ten dba,  
13 and based on ambient for over ten dba?

14 MR. BAKER: Your question indicates that  
15 you do not understand our use of those two terms.

16 MR. WHEATLAND: Well, fine. Would you  
17 explain it to me?

18 MR. BAKER: I would be more than happy  
19 to.

20 MR. WHEATLAND: Now, we only have an  
21 hour and a half because we promised we'd go to  
22 dinner.

23 MR. BAKER: I would run out of wind long  
24 before then.

25 Ambient is the term used to describe the

1 noise which exists, period. We have a situation  
2 where there is no power plant; we measure the  
3 ambient noise. That is the noise that exists.

4 One of the ways you can measure that  
5 ambient noise is to pick out the L90 or background  
6 level. You could also pick out an LEQ, and L50.  
7 You can calculate an LDN, a CNEL. Any of these  
8 metrics are ways of measuring the existing or,  
9 quote, "ambient" unquote, noise. This is before  
10 the power plant.

11 Now, we're looking at the possibility of  
12 adding a power plant and its noise to the ambient  
13 noise regime. At that point we no longer have the  
14 old ambient; we have the ambient plus the power  
15 plant. This yields some new and usually different  
16 noise level.

17 Ambient is not exclusive of background.  
18 Background is one of the many metrics you can use  
19 to measure ambient. Background is also another  
20 way you can measure the resulting noise regime  
21 after the power plant has been added.

22 MR. WHEATLAND: All right, so given  
23 that, why would you describe it in terms of  
24 increases in background under ten dba and  
25 increases in ambient over ten dba?

1           MR. BAKER: Let me revisit the paragraph  
2           that you quoted. We've concluded that a potential  
3           for significant noise impact exists where the  
4           noise of the project plus the background -- the  
5           background here meaning the ambient background, or  
6           the background before the power plant was added --  
7           exceeds the background, the background ambient  
8           before the power plant, by five to ten dba at the  
9           nearest sensitive receptor.

10           So, in other words, if you take the  
11           existing noise regime, the ambient, and you add  
12           the power plant to that, the result of that, if  
13           that is five to ten dba greater than it was  
14           without the power plant, you say there's a  
15           potential, not necessarily is, but there's a  
16           potential for a significant impact.

17           MR. WHEATLAND: All right, well, I'm not  
18           going to ask the question --

19           MR. BAKER: We've taken the ambient  
20           background, okay -- now, remember ambient --

21           MR. WHEATLAND: All right, I -- wait a  
22           minute --

23           MR. BAKER: -- background is one of the  
24           ways of measuring the ambient --

25           MR. WHEATLAND: Time out. Time out. In

1       your response to me you've used the term  
2       background, you've used the term ambient, you've  
3       used the term ambient background, and you've used  
4       the term background ambient.

5                Would it be correct to say, just fair to  
6       summarize, that these terms are interchangeable as  
7       you use them?

8                MR. BAKER:  They're not interchangeable,  
9       but rather they can be used together; they can be  
10      used exclusively.  The two terms are not  
11      necessarily linked or exclusive, but there are  
12      cases in which the two of them together in the  
13      same sentence are appropriate.

14               And I believe, unless my tongue got  
15      tied, that I did use them appropriately.

16               MR. WHEATLAND:  Okay.  Now I'm clear.

17               MR. BAKER:  No, let's not --

18               MR. WHEATLAND:  All right, let's see.  
19      So that now you also here talk about the test of  
20      significance.  And the test of significance is  
21      whether it's in relation to an L90 value at the  
22      nearest sensitive receptor.

23               Is it fair to say that for the purposes  
24      of this analysis on this project it's the L90 for  
25      the quietest four hours?  Or just simply the L90?



1           MR. BAKER:  When you measure noise you  
2       have to pick, among other things, the time period  
3       over which to measure the noise.

4           MR. WHEATLAND:  My question was, is it  
5       L90 or L90 over the quietest four hours.

6           MR. KRAMER:  Well, what is the first  
7       L90?  Is that a -- what period is that --

8           MR. WHEATLAND:  Well, I don't know, it  
9       just says L90, but it doesn't say what time  
10      period.

11          MR. BAKER:  Where are you reading?

12          MR. WHEATLAND:  I'm reading from the  
13      bottom of page 4.6-2.

14          MR. BAKER:  That paragraph does not  
15      address the time period.

16          MR. WHEATLAND:  I'm asking you about the  
17      time period for this analysis for this project.  
18      Is it L90 for the quietest four hours?

19          MR. BAKER:  We have --

20          (Pause.)

21          MR THIESSEN:  Do you want to repeat your  
22      question, please?

23          MR. WHEATLAND:  For the purpose of --  
24      you talk here about how you measure the question  
25      of whether there's a substantial permanent

1 increase in ambient noise levels. And you've  
2 stated that you're looking at the increase in  
3 terms of L90 at the nearest sensitive receptor.

4 And I'm asking, is it correct for the  
5 purposes of this project you're talking about L90  
6 for the quietest four hours.

7 MR THIESSEN: That's how -- well, let's  
8 put it this way, the quietest four consecutive  
9 hours.

10 MR. WHEATLAND: And that's what you're  
11 proposing for this project?

12 MR THIESSEN: Yes, sir.

13 MR. WHEATLAND: Good. That's all, thank  
14 you. And for this project, are you proposing it  
15 at the nearest sensitive receptor or at any  
16 sensitive receptor?

17 MR THIESSEN: We often pick the  
18 nearest --

19 MR. WHEATLAND: Well, it's just a  
20 question. Is it the nearest or any?

21 MR THIESSEN: It takes some more than  
22 yes or no.

23 MR. WHEATLAND: It's not either one? Is  
24 it one or the other?

25 MR THIESSEN: I would be glad to answer

1 your question.

2 MR. WHEATLAND: All right.

3 MR THIESSEN: The answer to your  
4 question is traditionally we pick the nearest  
5 sensitive receptor because that's typically where  
6 the highest noise levels of the project may occur.

7 In this case there are several  
8 residences in the vicinity of the project that are  
9 within the 40 dba contour of the project that are  
10 going to be exposed to noise levels that are going  
11 to substantially increase the background noise for  
12 those four quietest hours that you're referring  
13 to.

14 So the question is both, I guess the  
15 answer is both. Both the nearest and several  
16 others that are within the --

17 MR. WHEATLAND: All right, so the  
18 nearest --

19 MR THIESSEN: -- vicinity of the  
20 project.

21 MR. WHEATLAND: -- plus others. All  
22 right. On page 4.6-6 there is table 3. Who  
23 prepared this table?

24 MR THIESSEN: Me.

25 MR. WHEATLAND: Now, the applicant, in

1 its comments on the staff assessment, informed the  
2 staff that use of an arithmetic mean is  
3 appropriate for centile values, but is not a  
4 professionally acceptable methodology for  
5 averaging energy quantities.

6 The staff supplement did not respond to  
7 this comment, nor did it change the table. Why?

8 MR THIESSEN: I thought it was a  
9 picayune comment in light of the bigger questions  
10 that we're concerned with here. And, in fact,  
11 when we're dealing with the L90s for these four  
12 hours, there's typically a fraction of a db  
13 difference in doing the averaging geometrically or  
14 doing it arithmetically.

15 In any case, whether you do it one way  
16 or the other, you still end up with rather large  
17 increases in ambient/background noise levels.

18 You see, it's really a very simple  
19 situation out here. It's a very quiet area --

20 MR. WHEATLAND: No, no, my question was  
21 just why one or the other.

22 MR THIESSEN: Oh, I just thought I'd put  
23 it in context --

24 MR. WHEATLAND: Well, but I --

25 MR THIESSEN: -- for you.

1 MR. WHEATLAND: Well, you can do that  
2 through redirect. That's what your attorney's  
3 there for.

4 So it's your opinion that using the  
5 arithmetic mean is a professionally acceptable  
6 methodology?

7 MR THIESSEN: I would say in this case  
8 there is very little difference between them, and  
9 using it in this case makes no difference to speak  
10 of.

11 MR. WHEATLAND: All right. Well, take  
12 one, take, for example, G1 day 1, what would be  
13 the difference if you had calculated as the staff  
14 proposed -- or that the applicant proposed?

15 MR THIESSEN: G1 day 1, I'll look at day  
16 number one, the December 26. The four quietest  
17 hours were 30, 29, 29 and 29. The arithmetic  
18 average of that is 29. The geometric average of  
19 that is 29. I can do that in my head.

20 MR. WHEATLAND: All right, and so that  
21 would be the same for all of them?

22 MR THIESSEN: That's right.

23 MR. WHEATLAND: So, they're --

24 MR THIESSEN: Well, I won't say exactly  
25 the same, but very close.

1 MR. WHEATLAND: Have you done the  
2 calculation problem or just the --

3 MR THIESSEN: No, I just did the --

4 MR. WHEATLAND: -- it was just that one?

5 MR THIESSEN: -- and this one was  
6 relatively simple because the levels are virtually  
7 identical.

8 MR. WHEATLAND: I'm sorry?

9 MR THIESSEN: You were speaking of the  
10 L90 values for that day, sir?

11 MR. WHEATLAND: Let's go on, I'll come  
12 back to that in just a minute. I'm going to go  
13 out of step in applicant's exhibit, but we'll come  
14 back to that in just a minute.

15 I'd like to go then to table 4 on 4.6-9.  
16 Now my question here is just to understand the  
17 table.

18 The column that represents four-hour  
19 background noise level, is that the quietest  
20 consecutive four-hour period based on L90 values?

21 MR THIESSEN: Yes.

22 MR. WHEATLAND: So if the math is  
23 correct in this table, looking for example at the  
24 change that's over on the right-hand side, if I  
25 understand the table correctly, this is based on

1 measured background noise levels during the  
2 quietest 10 percent of the quietest four hours of  
3 the night, is that correct?

4 MR THIESSEN: Well, they're taking from  
5 the column prepared by the applicant that lists  
6 hourly L90 noise levels. L90 is represented in  
7 this appendix 8.5A from the AFC.

8 And, yes, I did look through this. And  
9 in accordance with Energy Commission practice,  
10 looked for the four quietest consecutive hours in  
11 terms of the L90 descriptor.

12 In this case the applicant did  
13 measurements over roughly a 48-hour period, so  
14 there were two nighttime periods to look at.

15 MR. WHEATLAND: Right. So it is the  
16 quietest 10 percent of the quietest four hours, is  
17 that right?

18 MR THIESSEN: No, sir. I didn't say  
19 that. It is the L90 values represented from the  
20 applicant's data for the plus or minus 48 hours  
21 that are presented in appendix 8.5A.

22 MR. WHEATLAND: All right, so what part  
23 of what I just said is incorrect? That it's the  
24 quietest --

25 MR THIESSEN: Well, maybe we're saying

1 it the same way, but I'm not sure --

2 MR. WHEATLAND: Well, you said, no, sir.

3 So what part was incorrect?

4 MR THIESSEN: Well, all I -- I'll just  
5 go back to what I said previously. That I'm  
6 looking for L90 values as presented in this table  
7 that I just mentioned.

8 MR. WHEATLAND: Over the quietest  
9 consecutive four hours?

10 MR THIESSEN: For each 24-hour period.

11 MR. WHEATLAND: For each 24-hour period.  
12 And that's for example, 28 is for the first four-  
13 hour period and 29 is for the second four-period,  
14 as reflected in receptor sites 1 and 2, correct?

15 MR THIESSEN: That's correct.

16 MR. WHEATLAND: Now you stated in the  
17 course of your answer that it was based upon  
18 Energy Commission practice. Upon what basis do  
19 you state that you were following Energy  
20 Commission practice in using the quietest 10  
21 percent of the quietest four hours to measure the  
22 increase?

23 And, Mr. Baker, please don't help him;  
24 let him answer the question.

25 MR THIESSEN: Would you repeat that,



1 please?

2 MR. WHEATLAND: Yeah, on what basis do  
3 you believe it is Energy Commission practice to  
4 measure the increase in noise levels based on the  
5 quietest 10 percent of the quietest four hours?

6 MR THIESSEN: It was based on  
7 information that was provided to me in a form  
8 prepared by the Energy Commission for examining  
9 background noise levels, prepared in connection  
10 with power plant siting.

11 MR. WHEATLAND: Did you bring that form  
12 with you today?

13 MR THIESSEN: I'm sorry, I don't have a  
14 copy.

15 MR. WHEATLAND: Can you make it  
16 available to us?

17 MR THIESSEN: If you wish.

18 MR. WHEATLAND: Yes, I wish. That would  
19 be a request.

20 Now, in the last paragraph on that page  
21 staff states, that such plant noise is in standby  
22 state, then L50 statistical metric is the same as  
23 the L90. Isn't that what's stated?

24 MR THIESSEN: Where are you referring  
25 to, sir?

1 MR. WHEATLAND: Oh, I'm still on page  
2 4.6-9, and I'm in the paragraph that's right under  
3 noise table 4.

4 MR. FREITAS: Excuse me a minute, I'm  
5 sorry. I don't mean to interrupt your pace, but  
6 the document you just requested him to deliver  
7 here, how do you go about us all seeing that and  
8 reviewing that document?

9 MR. WHEATLAND: Well, if you'd like to  
10 make a request, just say so and they'll provide  
11 you a copy, as well.

12 MR. FREITAS: What is the document?  
13 Could you identify it again for me?

14 MR. WHEATLAND: No, I don't know what it  
15 is. He said he relied on some form that was  
16 provided to him to show that this is the  
17 Commission practice. And I asked him if he would  
18 show us that form.

19 MR. FREITAS: I'm sorry.

20 MR. WHEATLAND: In the first part of the  
21 paragraph you talk about Fresno County's nighttime  
22 noise ordinance L50 standard, 40 dba -- 45, I'm  
23 sorry. And then you state that the L50  
24 statistical metric is the same as the L90,  
25 correct?

1 MR THIESSEN: It's essentially correct.

2 Essentially identical for --

3 MR. WHEATLAND: Oh, so it's not  
4 identical?

5 MR THIESSEN: Essentially --

6 MR. WHEATLAND: All right.

7 MR THIESSEN: -- identical.

8 MR. WHEATLAND: Now, the Fresno County  
9 standard for L50 is for -- one is for daytime and  
10 one is for nighttime, correct?

11 MR THIESSEN: They have criteria for  
12 both daytime and nighttime.

13 MR. WHEATLAND: And the 45 dba that  
14 you're referencing here is which?

15 MR THIESSEN: Nighttime.

16 MR. WHEATLAND: Nighttime. So, if we  
17 were to measure the nighttime values in L50 would  
18 they be the same as the four-hour L90 values that  
19 you show in table 4?

20 MR THIESSEN: They would probably be  
21 somewhat different.

22 MR. WHEATLAND: Okay, and so just to be  
23 clear, then they wouldn't be the same?

24 MR THIESSEN: What is referred to here  
25 in the paragraph you're referring to is the

1 ordinance standard has to do with the noise level  
2 produced by the source, the power plant, in this  
3 case.

4 And the power plant noise being steady  
5 state, as mentioned there, the hourly LEQ and the  
6 L90 and the L50 are usually one to two db  
7 difference.

8 MR. WHEATLAND: What I'm trying to get  
9 at is that your table 4 is not purporting to  
10 represent whether or not this project complies  
11 with the County's nighttime L50 standard, is that  
12 right?

13 MR THIESSEN: Yes, sir, in part.

14 MR. WHEATLAND: Well, which part is not  
15 right? Your table is not purporting to do that,  
16 is it?

17 MR THIESSEN: Yes, sir, it is. It shows  
18 that there are in that third column under plant  
19 noise level, there are at least locations within  
20 Fresno County, there are few locations where the  
21 noise level exceeds 45 L50 standard in Fresno  
22 County.

23 MR. WHEATLAND: So the fourth column  
24 called cumulatively, this 40 is an L50 value? Or  
25 an L90?

1 MR THIESSEN: Well, in this case it  
2 would probably be very similar to both.

3 MR. WHEATLAND: Well, which one is it in  
4 this table --

5 MR THIESSEN: Well, --

6 MR. WHEATLAND: -- for cumulative --

7 MR THIESSEN: -- it's really not  
8 relevant in the sense that they're very very close  
9 to one another and can almost be --

10 MR. WHEATLAND: All right.

11 MR THIESSEN: -- in the case of a power  
12 plant noise, added on --

13 MR. WHEATLAND: Which one --

14 MR THIESSEN: -- to the background  
15 noise.

16 MR. WHEATLAND: -- did you calculate,  
17 sir?

18 MR THIESSEN: Actually in this case I'm  
19 making the assumption that the power plant noise  
20 plus the metric of the power plant noise and the  
21 background noise are essentially the same.

22 MR. WHEATLAND: Is this an assumed value  
23 or a calculated value, sir?

24 MR THIESSEN: Which one are you  
25 referring to?

1 MR. WHEATLAND: The cumulative table, or  
2 the table --

3 MR THIESSEN: It's calculated.

4 MR. WHEATLAND: It's calculated?

5 MR THIESSEN: Yes.

6 MR. WHEATLAND: Okay, and which  
7 descriptor did you use to calculate it?

8 MR THIESSEN: It's not necessary to.  
9 All you're doing is basically adding decibel units  
10 to do this, whether they're in terms of L50, L90,  
11 LEQ, or LDN doesn't make a difference. You're  
12 still adding --

13 MR. WHEATLAND: I understand --

14 MR THIESSEN: -- the values.

15 MR. WHEATLAND: -- it's your testimony  
16 that it doesn't make a difference, but I'm asking  
17 you which one you used.

18 MR THIESSEN: As I said, in the addition  
19 process you could be either of all of those, or  
20 any of them. Because it's simple decibel  
21 arithmetic.

22 MR. WHEATLAND: All right, so if I  
23 understand you, regardless of which descriptor I  
24 start with, whether it's L10, L50 or L90, your  
25 answer, these numbers in the cumulative column of

1 table 4 would be the same, is that your testimony?

2 MR THIESSEN: They would be essentially  
3 the same in terms of L90, L50 or LEQ. For this  
4 particular situation.

5 MR. WHEATLAND: Now, have you calculated  
6 those to determine that?

7 MR THIESSEN: Calculated what?

8 MR. WHEATLAND: Using, you say you  
9 calculate under each they will essentially be the  
10 same. Have you done that calculation to verify  
11 whether that --

12 MR THIESSEN: No.

13 MR. WHEATLAND: -- is, in fact, true?

14 MR THIESSEN: Because the noise levels  
15 that are from the plant, itself, are only provided  
16 to us in terms of LEQ.

17 The assumption, however, is still made,  
18 and I think -- I don't know if we'd get an  
19 argument from that, that the plant noise level  
20 being steady state, relatively steady state for  
21 the most part, is those statistical metrics that  
22 we're quibbling about are essentially the same.

23 MR. WHEATLAND: Essentially the same?

24 MR THIESSEN: Or let me put it, not  
25 enough difference to really change the findings

1 and conclusions that are presented here.

2 MR. WHEATLAND: All right. In your  
3 opinion they're not enough different, but  
4 quantitatively how different are they?

5 MR THIESSEN: Well, I would say in  
6 general that they are stated to be, the LEQ for a  
7 power plant noise, and the L50 and the L90 may be  
8 typically one to two db different from one  
9 another. May be the same, may be that much  
10 different.

11 MR. WHEATLAND: You state also in page  
12 4.6-10, we're still at the same place here, --  
13 let's see, actually I'm going to move from that  
14 page to the next page.

15 How are we doing timewise? We'll be  
16 plenty before dinner.

17 You state, CEQA requires that noise  
18 impacts from a project be mitigated to a level of  
19 insignificance. Can you tell me please where in  
20 CEQA that is stated?

21 MR THIESSEN: Not specifically, sir, as  
22 far as citing chapter and verse.

23 MR. WHEATLAND: Okay, thank you. You  
24 state also on page 4.6-10 that the Energy  
25 Commission Staff has followed state regulatory



1 agency practice in selecting the five dba  
2 threshold for audible noise. Do you see that?  
3 It's in that second paragraph right under the  
4 sentence I just asked you about.

5 MR THIESSEN: Yes, I see that.

6 MR. WHEATLAND: Now, when you talk about  
7 5 dba threshold, what descriptor are you referring  
8 to?

9 MR THIESSEN: In this case, as long as  
10 we're talking about the same descriptor, it's  
11 understood whether it could be L50, L90 or LEQ,  
12 that's not particularly relevant as to what  
13 descriptor it is.

14 MR. WHEATLAND: All right. When you  
15 refer to state regulatory agency practice, which  
16 agencies are you referring to?

17 MR THIESSEN: That I don't know.

18 MR. WHEATLAND: You don't know which  
19 regulatory agency practice you're following? You  
20 state you're following --

21 MR THIESSEN: In this case I do believe,  
22 in retrospect, looking at that sentence, that may  
23 not be a foundation for that.

24 MR. WHEATLAND: Well, let me ask you  
25 this. Are you aware of any state regulatory

1 agency, or global agency, for that matter, in the  
2 State of California, that uses L90 as a descriptor  
3 to measure the five dba threshold?

4 MR THIESSEN: I can't think of any  
5 offhand.

6 MR. WHEATLAND: How about you, Mr.  
7 Baker, can you think of any?

8 MR. BAKER: No, just as I don't know of  
9 any other state agency that deals with noise from  
10 power plants the way we do.

11 MR. WHEATLAND: Okay, and how about you,  
12 Mr. Buntin, can you think of any?

13 MR. BUNTIN: Yes, there's an older, a  
14 much older noise ordinance format that was adopted  
15 by the League of California Cities. And its  
16 format was adopted by a number of jurisdictions,  
17 including, I believe, the City of Roseville. That  
18 jumps out to my mind. That said one would  
19 determine the background noise level, and it's  
20 usually defined to be the lowest level you see  
21 repeated over a certain time period during your  
22 measurement period that ends up being a background  
23 level, or very close to an L90.

24 MR. WHEATLAND: And so --

25 MR. BUNTIN: It's not defined exactly

1 the same way, but that's the effectiveness.

2 MR. WHEATLAND: So that's the one that  
3 comes closest to doing that? Are there any --

4 MR. BUNTIN: Right.

5 MR. WHEATLAND: -- others that come to  
6 mind?

7 MR. BUNTIN: Right. I can't think of  
8 them right offhand, but there were a number of  
9 cities which, back in the '60s, adopted that  
10 model. And so we run into it from time to time.

11 MR. WHEATLAND: But you can't recall any  
12 sitting here today?

13 MR. BUNTIN: Not right offhand.

14 MR. WHEATLAND: And again, we're talking  
15 here in this same discussion, five dba is  
16 considered to represent an increase in noise -- an  
17 increase that is noticeable, but not necessarily  
18 annoying, to a majority of receptors.

19 Mr. Thiessen, which descriptor were you  
20 intending when you made this statement?

21 MR THIESSEN: Again, the descriptor's  
22 irrelevant for that type of -- and you could  
23 describe that five dba in terms of L90, LEQ, L50,  
24 and perhaps a number of other statistical ways of  
25 expressing noise.

1           MR. WHEATLAND: So it's your testimony  
2           that a five dba increase L90 over the quietest  
3           four hours would provide the same value as a five  
4           dba increase LEQ?

5           MR THIESSEN: If you're comparing apples  
6           to apples, LEQ to LEQ, L90 to L90. The  
7           information, the literature that I'm familiar with  
8           would suggest that a five decibel change is the  
9           level that most people would perceive as  
10          definitely noticeable.

11          MR. WHEATLAND: A five dba change at  
12          what, L90 or LEQ?

13          MR THIESSEN: Well, I think you've asked  
14          that and I've answered it several times. And I've  
15          said that it's not particularly relevant --

16          MR. WHEATLAND: All right, --

17          MR THIESSEN: -- when we're speaking  
18          about changes in --

19          MR. WHEATLAND: Well, let me ask a --

20          MR THIESSEN: -- in noise levels.

21          MR. WHEATLAND: -- different question  
22          then. What is this professional literature you've  
23          reviewed to make the suggestion?

24          MR THIESSEN: Again, I don't have it  
25          with me, but in some of the research that has been

1 done -- maybe, Jim, you can --

2 MR. WHEATLAND: Well, I'm asking you,  
3 Mr. Thiessen first. I'll ask him next, but --

4 MR THIESSEN: I'm sorry, I don't have  
5 that, but I can certainly obtain it for you if you  
6 really want to know, but --

7 MR. WHEATLAND: Do you recall the  
8 author?

9 MR THIESSEN: No, sir, not offhand.

10 MR. WHEATLAND: Do you recall when it  
11 was published?

12 MR THIESSEN: No, sir.

13 MR. WHEATLAND: In paragraph four of the  
14 same page, 4.6-10, you state that it's common in  
15 the noise industry to average noise descriptors  
16 over some relevant period of time. Did you mean  
17 to say noise levels?

18 MR THIESSEN: That would be an equally  
19 good term, noise levels.

20 MR. WHEATLAND: All right. Now, this  
21 was one of the suggestions the applicant made to  
22 you in the comments on the staff assessment. Was  
23 there some reason why you didn't change it?

24 MR THIESSEN: Well, sir, we looked at  
25 his comments, but most of them seemed rather

1       picayune, to be quite frank with you. And not  
2       really addressing some of the rather obvious and  
3       substantial problems with the power plant --

4               MR. WHEATLAND: Well, let's talk about  
5       one that's substantial then. Right in that same -  
6       - on paragraph five staff states, nighttime  
7       ambient noise levels in rural areas are typically  
8       lower than daytime levels.

9               The applicant asked what evidence do you  
10      have to support this assertion.

11              MR THIESSEN: Well, I've probably, just  
12      speaking for myself, performed hundreds of sound  
13      level measurements over a 24-hour period and have  
14      analyzed the results in both urban areas and rural  
15      areas. And I would say almost 90 percent or more  
16      of the situations the nighttime noise levels are  
17      generally lower than the daytime noise levels.

18              When I speak of the nighttime, middle of  
19      the night, 1:00 a.m., 2:00 a.m., 3:00 a.m. versus  
20      levels that are measured in the daytime.

21              MR. WHEATLAND: Do you think that the  
22      way that we measure the increase in ambient should  
23      change depending on whether it's a nighttime level  
24      or daytime level?

25              MR THIESSEN: I'm not sure I follow --

1           MR. WHEATLAND: Well, assume that the  
2 quietest four hours of the day falls in the  
3 daytime rather than the nighttime. Should we be  
4 measuring the increase in ambient differently?

5           MR THIESSEN: No, if --

6           MR. WHEATLAND: Could --

7           MR THIESSEN: -- if there is a case  
8 where the daytime noise levels are consistently  
9 lower than the nighttime levels, I would suggest  
10 using those four hours as the criteria for  
11 determining what the average of those four, what  
12 the background is. And then comparing that to  
13 what the noise source is.

14          MR. WHEATLAND: In the last sentence it  
15 states that, staff usually believes it's both  
16 prudent and conservative to employ the lowest  
17 nighttime background noise level values as the  
18 relevant noise regime. The statement is usually;  
19 what are the exceptions to this rule?

20          MR THIESSEN: I can't think of any.

21          MR. WHEATLAND: In table 5 you set a  
22 different cumulative standard for each residence,  
23 rather than just setting a cumulative standard for  
24 the nearest residence.

25          Can you please tell me why?

1           MR THIESSEN: Well, the purpose of table  
2       5 is to show both what the plant noise level would  
3       be as conditioned in order to reduce it adequately  
4       so that it would not go beyond more than a ten  
5       decibel increase; and to show what the resulting  
6       cumulative noise level would be. The cumulative  
7       being the sum of the plant noise level plus the  
8       background, that four-hour background noise level.

9           MR. WHEATLAND: Okay, so why is staff  
10      proposing a different cumulative standard for each  
11      residence, rather than just proposing a standard  
12      for the nearest residence?

13          MR THIESSEN: Well, because based on  
14      background measurements that were provided to us,  
15      the background noise levels for the days that were  
16      sampled, anyway, vary from location to location.

17          MR. WHEATLAND: Now that's true of any  
18      project, isn't it?

19          MR THIESSEN: I don't know about any,  
20      but it certainly was the case here.

21          MR. WHEATLAND: All right, well, let me  
22      ask it this way. Are you aware of any other  
23      Commission project in which the staff has proposed  
24      a different cumulative standard for each residence  
25      in the project vicinity?



1 MR THIESSEN: I'm not aware of any.

2 MR. WHEATLAND: How about you, Mr Baker?

3 MR. BAKER: Just sitting here I can't  
4 recall one. If I were given time to go research  
5 it, I might or I might not be able to find one.

6 MR. WHEATLAND: All right. Are you  
7 aware of any, Mr. Buntin?

8 MR. BUNTIN: We're proposing that for  
9 the SMUD Cosumnes plant.

10 MR. WHEATLAND: So, given the fact that  
11 it hasn't been the Commission practice, been the  
12 staff's practice as far as anyone can recall, to  
13 propose different cumulative standards for each  
14 residence, Mr. Thiessen, why is it being proposed  
15 here?

16 MR THIESSEN: To my knowledge this is  
17 the quietest location where a power plant has ever  
18 been attempted to be sited. And being in such an  
19 extremely quiet area, that it became very  
20 important as to what the background noise level  
21 environment is.

22 In which case, because at least based on  
23 the data provided to us, assuming that is correct  
24 data, that's all we have, the background noise  
25 levels provided to us did vary from location to

1 location.

2 And in order to achieve an increase no  
3 more than ten decibels, the conditioned noise  
4 level at each location also had to vary.

5 MR. WHEATLAND: Now, you state to your  
6 knowledge this is the quietest location, how did  
7 you acquire the knowledge that this is the  
8 quietest one?

9 MR THIESSEN: Well, only through  
10 conversation with Mr. Buntin and Mr. Baker.

11 MR. WHEATLAND: But you actually --

12 MR THIESSEN: Who have admittedly much  
13 more experience --

14 MR. WHEATLAND: Right.

15 MR THIESSEN: -- than I do.

16 MR. WHEATLAND: But, you, yourself have  
17 not reviewed the ambient noise levels for any  
18 other power plant, other than this one, is that  
19 correct?

20 MR THIESSEN: That is correct; however,  
21 I have looked at a lot of background noise levels  
22 in my time in rural areas. And these rank among  
23 the most quiet locations that I have seen.

24 MR. WHEATLAND: We're talking here about  
25 power plants, though.

1 MR THIESSEN: The principle's the same.

2 MR. WHEATLAND: You haven't seen --

3 MR THIESSEN: We're looking at a very  
4 quiet area where you're imposing a relatively  
5 noisy noise source over at, so that was why on  
6 this one it was necessary to go on a location-by-  
7 location basis and try to set power plant noise  
8 levels at -- or limits at those locations so they  
9 would not achieve such a substantial increase at  
10 those homes.

11 MR. WHEATLAND: Now, on page 4.6-12 you  
12 talk here about a noise level of 40 dba would be  
13 considered quiet in many locations. And you cite  
14 the California model community noise control  
15 ordinance, is that correct?

16 MR THIESSEN: Yes, sir.

17 MR. WHEATLAND: And when was that  
18 ordinance -- model ordinance published?

19 MR THIESSEN: I think it was in the mid  
20 '70s as I recall.

21 MR. WHEATLAND: Yeah, would you accept  
22 1977?

23 MR THIESSEN: That sounds correct.

24 MR. WHEATLAND: And has it been  
25 published or distributed or available since that

1 date?

2 MR THIESSEN: I have it. It's been  
3 available to me since --

4 MR. WHEATLAND: And when did you obtain  
5 it?

6 MR THIESSEN: Probably many years ago.

7 MR. WHEATLAND: Right. And, in fact,  
8 the office that published it is no longer in  
9 existence, isn't that right?

10 MR THIESSEN: I don't know. It's kind  
11 of stood the test of time, being that long without  
12 being changed.

13 MR. WHEATLAND: Stood the test of time.  
14 What exactly does the ordinance recommend with  
15 respect to a descriptor for 40 dba?

16 MR THIESSEN: Well, the ordinance sets  
17 out suggested guidelines for several different  
18 types of areas. And again, I don't have a copy of  
19 it with me. But if you'll indulge my memory for a  
20 moment, it speaks to suburban areas and --

21 MR. WHEATLAND: What descriptor does it  
22 use, sir?

23 MR THIESSEN: Descriptor?

24 MR. WHEATLAND: Yes, descriptor.

25 MR THIESSEN: For noise?

1 MR. WHEATLAND: For dba.

2 MR THIESSEN: Is uses L50, among others.

3 MR. WHEATLAND: Are you guessing or is  
4 that --

5 MR THIESSEN: No. I'd be glad to --  
6 L50, L25 --

7 MR. WHEATLAND: So your testimony is --  
8 okay, L50 or L25.

9 MR THIESSEN: I'm not done. Do you want  
10 to hear the rest of it?

11 MR. WHEATLAND: Well, the question was  
12 what descriptor -- when you talk about 40 dba  
13 being recommended by --

14 MR THIESSEN: Yes.

15 MR. WHEATLAND: -- this ordinance, my  
16 question is which --

17 MR THIESSEN: That is --

18 MR. WHEATLAND: -- descriptor --

19 MR THIESSEN: Yeah, that is the term,  
20 the L50 for very quiet areas during the nighttime.

21 MR. WHEATLAND: I'm not asking why 40  
22 dba, all I'm asking is the descriptor. And you've  
23 testified L50 --

24 MR THIESSEN: I said L50, --

25 MR. WHEATLAND: -- or L25.

1 MR THIESSEN: -- yes, sir.

2 MR. WHEATLAND: All right. And you also  
3 mentioned the World Health Organization  
4 guidelines, is that right?

5 MR THIESSEN: Yes.

6 MR. WHEATLAND: Can you give me a  
7 reference to those guidelines, please?

8 MR THIESSEN: No more than -- well, no,  
9 I can't right at this moment, I'm sorry.

10 MR. WHEATLAND: Now, a couple pages  
11 earlier in your testimony you stated that 40 dba  
12 is a reasonable criterion. Now you're speaking 40  
13 dba based on a model noise ordinance that was  
14 published in 1977.

15 I'm a little confused by your testimony.  
16 What is it you're recommending here, 40 or 45?

17 MR THIESSEN: I'm recommending neither,  
18 sir. I think our --

19 MR. WHEATLAND: On what --

20 MR THIESSEN: -- conditions of approval  
21 we're pointing out that under CEQA, in order not  
22 to create a significant noise impact in this  
23 extremely quiet environment, that in order to not  
24 increase the noise levels by more than ten  
25 decibels, the plant noise levels under table 5,

1 which are basically reiterated under conditions of  
2 certification, would be necessary so that we do  
3 not create a significant impact.

4 In addition, the Fresno County noise  
5 ordinance specifies a 45 L50. And, of course,  
6 there's about four houses that are going to exceed  
7 45 in the County area.

8 MR. WHEATLAND: All right. Now, with  
9 respect to the County's ordinance of 45 dba, we've  
10 already established that nighttime value.

11 MR THIESSEN: That's correct.

12 MR. WHEATLAND: On what basis do you say  
13 that that is the number that's recommended by the  
14 County?

15 MR THIESSEN: Sir, it's in their  
16 ordinance.

17 MR. WHEATLAND: Where in their  
18 ordinance?

19 MR THIESSEN: Well, if you want me to  
20 cite --

21 MR. WHEATLAND: Yeah, I do.

22 MR THIESSEN: I'm sorry I don't have it  
23 with me at this moment.

24 MR. WHEATLAND: All right, what is the  
25 land use category that that number is associated

1 with?

2 MR THIESSEN: I think the designated  
3 residential.

4 MR. WHEATLAND: All right. There's also  
5 an agricultural land use category in that  
6 ordinance, is that correct?

7 MR THIESSEN: Are you speaking of the  
8 ordinance or the --

9 MR. WHEATLAND: I'm sorry, you're right.

10 MR THIESSEN: -- the elements?

11 MR. WHEATLAND: Yeah, we're talking  
12 about, that's exactly right, it's the general plan  
13 elements.

14 MR THIESSEN: Yes. Yeah, so it's  
15 residential for 45. And what is it for  
16 agricultural?

17 MR THIESSEN: I don't think the  
18 ordinance has a limit for agricultural uses.

19 MR. WHEATLAND: I'm sorry that I don't  
20 have copies for everyone, but what shall I -- I  
21 just have this copy of the ordinance. Can I  
22 provide it to the witness and ask him to look at  
23 it?

24 MR. HARRIS: It's the element.

25 MR. WHEATLAND: Or, I'm sorry, the



1 element; it's not the ordinance, it's the element  
2 of the general plan --

3 HEARING OFFICER WILLIAMS: Just identify  
4 it for the record, and --

5 MR. WHEATLAND: All right. What I'm  
6 identifying is the noise element of the San  
7 Joaquin County -- sorry -- jeez -- the Fresno  
8 County general plan update January 2000, chart HS-  
9 1. May I have permission to show this to the  
10 witness?

11 HEARING OFFICER WILLIAMS: Yes.

12 MR. FREITAS: Was that dash one?

13 MR. WHEATLAND: Dash one.

14 ASSOCIATE MEMBER GEESMAN: HS-1.

15 MR. FREITAS: HS --

16 MR. HARRIS: HS-1.

17 MR. FREITAS: Thank you.

18 MR. WHEATLAND: And after you've had a  
19 chance to look at that table, could you please  
20 read to me the land use category that's at the  
21 bottom line of that chart.

22 MR THIESSEN: The bottom line?

23 MR. WHEATLAND: Yes.

24 MR THIESSEN: Industrial, manufacturing,  
25 utilities, agriculture.

1 MR. WHEATLAND: Great. And what is the  
2 recommended standard for that category?

3 MR THIESSEN: The normally acceptable  
4 level for that category is 75 LDN or CNDL.

5 MR. WHEATLAND: Thank you.

6 MR. KRAMER: Are we going to need a copy  
7 of this to introduce? Because Matt's about to go  
8 make some others, and he could make this, as well.

9 MR. WHEATLAND: If he's like to make a  
10 copy, that would be great.

11 (Pause.)

12 MR. WHEATLAND: Now, I'm just going to  
13 have one more question and then I want to move to  
14 the --

15 MR. FREITAS: I just want to make a  
16 statement on relevance. Does this have any  
17 relevance to the fact that it's in the City now,  
18 not the County?

19 MR. WHEATLAND: Well, that's a good --  
20 that was my question. You're anticipating very  
21 well.

22 ASSOCIATE MEMBER GEESMAN: I felt you  
23 two were working in concert.

24 (Laughter.)

25 MR. WHEATLAND: Is it the staff's

1 position that the County's noise element of their  
2 general plan is an applicable LORS to this  
3 project?

4 MR THIESSEN: Yes, I think it is. It is  
5 one of the regulations applicable to this project.

6 MR. WHEATLAND: So, in other words it's  
7 your testimony that if the Commission didn't have  
8 preemptory jurisdiction this project would be  
9 subject to the jurisdiction of Fresno County with  
10 respect to that general plan element? Even though  
11 it is not located within the unincorporated area  
12 of the County?

13 MR THIESSEN: The question of the -- I'm  
14 going to back up. We went from looking at the  
15 Fresno County noise element, and we are now  
16 speaking of the noise ordinance, is that correct?  
17 Clarification.

18 MR. WHEATLAND: Yes, I have misspoke  
19 several times. So let me be really clear. This  
20 is the noise element of Fresno County general  
21 plan.

22 MR THIESSEN: Okay.

23 MR. WHEATLAND: Is that an applicable  
24 LORS?

25 MR THIESSEN: I'm sorry?

1 MR. WHEATLAND: Is that an applicable  
2 LORS?

3 MR THIESSEN: Yes, I believe it is.

4 MR. WHEATLAND: Okay. I'll just accept  
5 your testimony and we can debate that in the  
6 briefs, I think.

7 We are well on our way to dinner.

8 I'd like to ask you --

9 MR. FREITAS: I'd like to note something  
10 for the record.

11 MR. WHEATLAND: Could you do it after my  
12 cross?

13 MR. FREITAS: Sure.

14 MR. WHEATLAND: Thanks, really  
15 appreciate it.

16 I'd like to ask some questions about  
17 exhibit 2M. That's that power plant noise limits  
18 table.

19 MR. KRAMER: Okay, that was prepared by  
20 Mr. Baker.

21 MR. WHEATLAND: Okay, that'd be great.

22 MR. KRAMER: That was 2F, wasn't it?

23 MR. WHEATLAND: Now, Mr. Baker, I'm  
24 going to ask you a couple questions that we asked  
25 off the record yesterday --

1 MR. KRAMER: You said 2F, but isn't it  
2 2M?

3 MR. WHEATLAND: I said 2M. Did I  
4 misspeak?

5 MR. KRAMER: Okay.

6 MR. FREITAS: Too long a day.

7 MR. WHEATLAND: Mr. Baker, do you have  
8 any work papers associated with the preparation of  
9 this document?

10 MR. BAKER: I anticipated you'd ask  
11 that. What I've done, since there were no work  
12 papers and I said so yesterday, --

13 MR. WHEATLAND: Fine, then that's -- I  
14 asked you a question that can be answered yes or  
15 no.

16 HEARING OFFICER WILLIAMS: Okay, he said  
17 no.

18 MR. WHEATLAND: Okay, good. Do you have  
19 a list of references that show where you derived  
20 the values under the column noise limit dba?

21 MR. BAKER: Since I'm limited to binary  
22 answers, I'll have to answer yes.

23 MR. WHEATLAND: Would you provide it to  
24 me, please?

25 MR. BAKER: I do not have a copy to

1 offer you at the moment. In fact, I'm looking for  
2 my copy as I speak. Please bear with me for a  
3 moment or two. Found it.

4 What I did after yesterday's hearing  
5 when you telegraphed the fact that you'd probably  
6 be asking for this, is I sat down and  
7 reconstructed the numbers in that table.

8 Unfortunately, I didn't have time. It's  
9 been, you know, quite a bit less than 24 hours,  
10 and I did have other things to do in the meantime.

11 I had time to go through and revisit the  
12 source of the numbers for some of the projects on  
13 that list, including all of the Calpine projects.  
14 So I'm hoping that for the purposes of this  
15 evening's discussion that would be adequate.

16 MR. WHEATLAND: Okay, well, every little  
17 bit helps, and we'll appreciate you providing that  
18 to us after the close of this cross-examination.

19 For the column noise limit dba, what  
20 noise descriptor was used for the values that are  
21 reflected in this column?

22 MR. BAKER: With one exception it's my  
23 belief that we're talking in LEQ here.

24 MR. WHEATLAND: And what is that  
25 exception?

1 MR. BAKER: On the second page, the  
2 Calpine's East Altamont project that was described  
3 in terms of L50 at the request of Calpine.

4 MR. WHEATLAND: So the value 42.2 is not  
5 LEQ, correct?

6 MR. BAKER: Where do you find -- no,  
7 sir, look at the next line down.

8 MR. WHEATLAND: Oh, I'm sorry, if I  
9 could read I'd be dangerous. East Altamont is 39,  
10 so that's L50, is that correct?

11 MR. BAKER: Now before I answer that I  
12 have to say that in going through this I found two  
13 errors in the table for which I apologize. One of  
14 the errors was on that line in that box.

15 MR. WHEATLAND: All right, we'll go and  
16 correct the other one, too, --

17 MR. BAKER: Okay.

18 MR. WHEATLAND: -- because you have the  
19 same interest we in having the table as exact as  
20 possible. But I just want to be clear that 39 L50  
21 is the value there.

22 MR. BAKER: No, it's not. I must  
23 correct that. The number is not 39. It's 43  
24 decibels L50.

25 MR. WHEATLAND: Oh, I'm sorry, so the

1 number that you show noise limit dba 39 on the  
2 table you provided us, 2M, you're correcting now  
3 to 43?

4 MR. BAKER: Correct. And if we go to  
5 the next column to the right --

6 MR. WHEATLAND: Well, no, just wait a  
7 minute. So you're correcting it to 43 LEQ?

8 MR. BAKER: No, sir. At Calpine's  
9 request --

10 MR. WHEATLAND: 43 L50.

11 MR. BAKER: At Calpine's request the  
12 condition of certification which covers that has  
13 been written in terms of L50. I did not object to  
14 that; I went along with the.

15 MR. WHEATLAND: I'm just trying to get  
16 these numbers to be consistent. So we should have  
17 in that block 43 L50, correct?

18 MR. BAKER: Correct.

19 MR. WHEATLAND: And if that is adjusted  
20 to LEQ what would that number be?

21 MR. BAKER: Considering that it's  
22 intended to measure just the noise from the  
23 source, meaning just the --

24 MR. WHEATLAND: Pretty close.

25 MR. BAKER: -- power plant; and



1 considering, as we've said before at great length,  
2 that the noise from a power plant is generally  
3 very steady, the L50 and the LEQ can be expected  
4 to be very very close, if not the same.

5 MR. WHEATLAND: Good, we agree. And you  
6 have another correction for me, please?

7 MR. BAKER: I have several more.

8 MR. WHEATLAND: Okay.

9 MR. BAKER: Let's move one box to the  
10 right, East Altamont; noise measured at distance.  
11 Change that to 3200 feet.

12 MR. WHEATLAND: Okay.

13 MR. BAKER: Move one box to the right,  
14 East Altamont, equivalent noise level of 1000  
15 feet; change that to 53 decibels.

16 MR. WHEATLAND: Okay.

17 MR. BAKER: Let's move down one, two,  
18 three --

19 MR. FREITAS: One second, what was that  
20 one you just did? I'm sorry.

21 MR. BAKER: Mr. Harris will help you.  
22 Move down one, two, three, four, five boxes,  
23 please. And over to the left one. We're talking  
24 about Calpine's Inland Empire Energy Center  
25 project.

1           The noise measured at distance is now  
2   1000 feet. Evidently I made a typographical  
3   error; I meant to put 1000, but it came out 1600.  
4   And because of that the number to the right of  
5   that, equivalent noise level, was incorrect. The  
6   new correct number is 45 decibels.

7           MR. WHEATLAND: Okay.

8           MR. BAKER: Which, by the way, shows  
9   that Calpine's Inland Empire Plant is intended to  
10  be extremely quiet.

11          MR. WHEATLAND: Well, I'm going to  
12  accept your correction but not your  
13  editorializing.

14          MR. BAKER: You're very welcome to  
15  reject it.

16          HEARING OFFICER WILLIAMS: Could you  
17  provide an updated 2M at some point, staff?

18          MR. BAKER: Yes, sir, I'll --

19          MR. KRAMER: We'll put it in the exhibit  
20  book.

21          MR. WHEATLAND: Any others?

22          MR. BAKER: No, sir.

23          MR. WHEATLAND: Now, with respect to the  
24  same column, are these plant noise levels or  
25  cumulative levels?

1 MR. BAKER: We've talked about three  
2 columns, which one are you referring to?

3 MR. WHEATLAND: Noise limit dba.

4 MR. BAKER: Okay. This is the noise,  
5 just that noise from the power plant.

6 MR. WHEATLAND: Okay, and is that true  
7 with respect to all the numbers in that column?

8 MR. BAKER: That's my understanding.

9 MR. WHEATLAND: Now, are these numbers  
10 intended to reflect the prescriptive limits that  
11 were adopted in the Commission decision, the  
12 limits proposed by a party, or just the predicted  
13 noise levels of the facility?

14 MR. BAKER: Since some of these cases  
15 are still before the Commission and do not yet  
16 have a decision, and since some of them have been  
17 decided and sited, the answer differs.

18 If you want to pick out a particular  
19 one, as I say, I've revisited the sources for many  
20 of these, including all of the Calpine projects --

21 MR. WHEATLAND: Well, let me ask you  
22 this. For the ones that have already been  
23 decided, are those adopted prescriptive limits by  
24 the Commission, or are those recommended by the  
25 staff?

1 MR. BAKER: Let me go through my list.

2 Excuse me, the one that have been decided?

3 MR. WHEATLAND: Um-hum, that have been.

4 MR. BAKER: Okay.

5 MR. KRAMER: I'd object to the question.

6 I think it needs clarification. There will be  
7 some cases where staff recommended a number and  
8 the Commission adopted that. So I don't --

9 MR. WHEATLAND: Well, then that would --

10 MR. KRAMER: -- that staff adopted in  
11 your terminology?

12 MR. WHEATLAND: Yeah, that would -- no,  
13 that would be the Commission adopted, yes. If the  
14 Commission's adopted it, that's fine. But if the  
15 number reflects something different than what the  
16 Commission adopted, I'd like to know that.

17 MR. KRAMER: Okay, so --

18 MR. WHEATLAND: For those where the  
19 Commission has decided.

20 MR. KRAMER: So you're not trying to  
21 find out where the Commission may have changed a  
22 staff recommendation, for instance?

23 MR. WHEATLAND: No, I just want to be  
24 sure that the numbers here are what the Commission  
25 actually adopted, and nothing something what the

1 staff had proposed and the decision has already  
2 been decided.

3 MR. KRAMER: Okay, with that  
4 understanding I withdraw my objection.

5 MR. BAKER: Now, since I'm a little  
6 confused at all this dialogue, would you please  
7 repeat the question?

8 MR. WHEATLAND: For those proceedings  
9 where the Commission has issued a final decision  
10 are the values shown in your table the numbers  
11 that were adopted by the Commission as a  
12 prescriptive limit? Or are they something  
13 different?

14 MR. BAKER: It's my understanding that  
15 they are the numbers adopted by the Commission.

16 MR. WHEATLAND: For the Three Mountain  
17 case, 99-AFC-2, for example, that would be the  
18 number that was adopted by the Commission?

19 MR. BAKER: This is one of the ones I  
20 did not have time to revisit today in going back  
21 over this table.

22 MR. WHEATLAND: All right. For High  
23 Desert, is that a number adopted by the  
24 Commission?

25 MR. BAKER: The number in High Desert I

1       took from the staff assessment, and my  
2       recollection is that that number was adopted by  
3       the Commission.

4               MR. WHEATLAND:   Okay, are there any  
5       others you took from the staff assessment for  
6       proceedings that have already been decided?

7               MR. BAKER:   The ones I reviewed,  
8       Crockett, Proctor and Gamble are from the final  
9       staff assessment.   Campbell is from the final  
10      staff assessment.   High Desert from the staff  
11      assessment.   Calpine's Sutter project from the  
12      final staff assessment and from the decision,  
13      both.

14              Calpine's Los Medanos from the proposed  
15      decision.   Calpine's Delta from the decision.  
16      Calpine's Metcalf from the decision.   Calpine's  
17      Otay Mesa from the decision and from the final  
18      staff assessment.

19              Calpine's Pastoria from the final staff  
20      assessment.   Calpine's East Altamont from the  
21      proposed decision -- excuse me, that one hasn't  
22      been decided yet.   I went too far.

23              MR. WHEATLAND:   Okay.   How did you  
24      normalize to 1000 feet?   How do you normalize the  
25      noise levels at 1000 feet?

1 MR. BAKER: Let me allow Mr. Buntin to  
2 answer that. He's the one -- he and Mr. Thiessen  
3 did the math to make sure it was correct, because  
4 I recognize them as the experts. And Mr. Buntin  
5 will be happy to explain it to you, or Mr.  
6 Thiessen.

7 MR. WHEATLAND: Okay.

8 MR THIESSEN: We used the -- give me a  
9 copy of that -- the table called noise limit,  
10 whatever that decibel level was, and compared that  
11 to the noise measured at distance, which varies  
12 from, well, depending on what it is, a few hundred  
13 feet to a few thousand feet.

14 Using the standard spherical spreading  
15 for noise, which is six decibels per doubling of  
16 distance, I picked 1000 feet as just an arbitrary  
17 number so we could compare the noise levels at  
18 each plant at an identical distance for comparison  
19 purposes.

20 MR. WHEATLAND: All right. And were  
21 atmospheric and other attenuating factors taken  
22 into account?

23 MR THIESSEN: No.

24 MR. WHEATLAND: Would it surprise you if  
25 I told you that for Pastoria if you took those

1 factors into account it would increase from 72 dba  
2 to approximately 95 dba?

3 MR THIESSEN: I don't know whether I'd  
4 be surprised or not. I'd have to see how you came  
5 to that.

6 MR. WHEATLAND: Well, take a look at the  
7 distance on Pastoria.

8 HEARING OFFICER WILLIAMS: We're still  
9 on table 2?

10 MR. WHEATLAND: I'm still on 2N, yeah,  
11 and I'm on Pastoria.

12 MR THIESSEN: At that distance I would  
13 expect that atmospheric and other conditions  
14 would play some part.

15 MR. WHEATLAND: How was the distance  
16 measured in this table, where you have noise  
17 measured at distance? Was it measured to the  
18 property line, or to the noise source?

19 MR. BAKER: The distance figures were  
20 taken from staff assessments, final staff  
21 assessments, proposed decisions, Commission  
22 decisions. These were the numbers that were used  
23 in the analysis and in probably every case, if any  
24 exceptions there were very few, this is the  
25 assumed distance from the power plant noise center



1 to the nearest sensitive receptor.

2 And these, in most cases, if not all  
3 cases, are numbers that were provided in the  
4 applicant's application for certification and used  
5 in staff's assessment, staff's analysis.

6 MR. WHEATLAND: Now, with respect to  
7 this list, Mr. Baker, in how many of these cases  
8 was L90, during the quietest four hours, used to  
9 measure the increase in ambient noise levels?

10 MR. BAKER: If I were given time to  
11 research that I could give you an accurate answer.  
12 Without that time I'd have to say anything from  
13 Delta Energy Center on to the present as a rough  
14 estimate.

15 MR. KRAMER: Is that chronologically?

16 MR. BAKER: Yes. Again, the accuracy of  
17 my answer depends on the accuracy of my memory  
18 without being able to visit my files and  
19 paperwork.

20 MR. WHEATLAND: I have four exhibits  
21 that I want to introduce. And then after we  
22 introduce those exhibits that will complete the  
23 cross-examination.

24 The first one -- pass that out --

25 HEARING OFFICER WILLIAMS: Are these

1 exhibits that you'll be using in cross-  
2 examination?

3 MR. WHEATLAND: Yes.

4 MR. KRAMER: We'll probably need a few  
5 minutes to look at them so we might as well go off  
6 the record.

7 HEARING OFFICER WILLIAMS: Okay. Let's  
8 go off the record.

9 (Off the record.)

10 MR. WHEATLAND: Mr. Baker, I believe  
11 yesterday you testified that as far as you could  
12 remember, as a staff person, the Commission Staff  
13 has only used L90. I believe you testified that  
14 you've inherited L90 when you came to the  
15 Commission 10 or 11 years ago. Do I recall your  
16 testimony correctly?

17 MR. BAKER: Yes, that was my  
18 understanding.

19 MR. WHEATLAND: All right, would you  
20 please look at the final staff assessment for the  
21 La Paloma Generating Project, which is 4B-11.

22 MR. BAKER: As I do, would you please  
23 let us know who was the author of the noise  
24 chapter on that, since I don't seem to recall  
25 that?

1 MR. WHEATLAND: No, I don't recall it,  
2 either.

3 MR. BAKER: I do know I was not the  
4 author.

5 MR. WHEATLAND: No, I'm not suggesting  
6 that you were, sir.

7 Can you please tell me what descriptors  
8 are used in this staff assessment for this  
9 project?

10 MR. BAKER: If I had the entire staff  
11 assessment before me I could do that.

12 MR. WHEATLAND: Well, what are the  
13 descriptors shown in table 2?

14 MR. BAKER: This table 2 summarizes the  
15 ambient noise survey that was taken by the  
16 applicant. So these were figures, I assume, from  
17 the AFC. Without having the entire chapter, noise  
18 chapter, in front of me to review, I'm only basing  
19 my answers on the one page you've allowed me to  
20 see here.

21 The table lists LDN, CNEL and LEQ  
22 averaged over 24 hours. However, let me go on to  
23 make it clear to the Committee that the portion of  
24 the noise chapter here does not include staff's  
25 analysis of the project noise on the community.

1           Again, you know, showing me just one or  
2           two pages out of a chapter of noise and then  
3           asking me questions about it is, at best,  
4           misleading. I need to have the entire document in  
5           front of me to make intelligent and reasoned and  
6           applicable answers to any question you might ask.

7           MR. WHEATLAND: All right, well, read to  
8           me the second paragraph with respect to setting.

9           MR. BAKER: The existing ambient noise  
10          environment is very quiet in nature. The primary  
11          ambient noise sources are local traffic along  
12          route 33, occasional local traffic along Skyline  
13          Road, and the background noise from the oilfield  
14          equipment.

15          MR. WHEATLAND: All right, and there is  
16          a reference to L90 here, and I wanted to direct  
17          your attention to it. It's in the fourth  
18          paragraph down regarding sound levels at each of  
19          the three locations are very low at night.

20          Could you read that paragraph for me, as  
21          well?

22          MR. BAKER: Sound levels at each of the  
23          three locations were very low at night. The  
24          residual L90 or background noise levels range from  
25          34 to 43 decibels A during the nighttime hours.

1 MR. WHEATLAND: And do you see here that  
2 it refers to the nighttime hours and not the  
3 quietest four hours?

4 MR. BAKER: Yes.

5 MR. WHEATLAND: Now, to address Mr.  
6 Baker's concern, I was making this exhibit  
7 available intending to try to save paper. But  
8 what I would like to do is to offer, as a late-  
9 filed exhibit, the entire section of the FSA on  
10 noise with respect to the La Paloma Generating  
11 project and --

12 HEARING OFFICER WILLIAMS: The Committee  
13 can take official notice of it, so --

14 MR. WHEATLAND: Okay, great.

15 HEARING OFFICER WILLIAMS: -- we'll take  
16 official notice of the noise section.

17 MR. WHEATLAND: Great, thank you. Now  
18 the next one I'd like you to look at, please, is  
19 4B-12. That's the final staff assessment for the  
20 Pastoria Energy Facility.

21 HEARING OFFICER WILLIAMS: Same thing  
22 with respect to 4B-12; the Committee will take  
23 official notice of the staff report section on  
24 noise in the Pastoria project.

25 MR. WHEATLAND: All right. Well, then I

1 won't even need to ask Mr. Baker to read it.

2 The next one is the final staff  
3 assessment for the High Desert.

4 HEARING OFFICER WILLIAMS: Same thing,  
5 the Committee will take --

6 MR. WHEATLAND: All right.

7 HEARING OFFICER WILLIAMS: -- official  
8 notice of it.

9 MR. FREITAS: 4B-13?

10 MR. WHEATLAND: Now on High Desert, I  
11 believe, Mr. Baker, you were the person  
12 responsible for preparing this, is that correct?

13 MR. BAKER: That's correct.

14 MR. KRAMER: Excuse me, the first page  
15 is from the land use section. Is that  
16 intentional?

17 MR. WHEATLAND: Yes, it actually is.

18 MR. KRAMER: Okay.

19 MR. WHEATLAND: The first one is on the  
20 land use section because it shows the distance to  
21 the -- and I'll ask him a question about it.

22 It states that the H. George School and  
23 the Sheppard School within the former Base are  
24 about 1.4 miles to the south of the HDPP site. Is  
25 that the distance you used in preparing your

1 table, Mr. Baker?

2 MR. BAKER: No. If you'll flip the page  
3 you'll come to noise section page 160. If you  
4 look down to the third paragraph, both the second  
5 and third lines, you'll see that the distance used  
6 was 1.25 miles.

7 MR. WHEATLAND: And was there a reason  
8 why you used 1.25 rather than 1.4?

9 MR. BAKER: Because I did not take the  
10 numbers that the land use author used, I used  
11 numbers that were available to me from the  
12 application for certification.

13 MR. WHEATLAND: Now, on page 163 there's  
14 a discussion here of community effects. And there  
15 are some values that are represented here.  
16 Predicted noise levels at one mile from the site  
17 will range between 37 and 49 dba. Reading in the  
18 second paragraph under power plant. Are these  
19 numbers -- which descriptor is used for these  
20 numbers?

21 MR. BAKER: Let me read that sentence.  
22 Quote, "The applicant predicts that noise levels  
23 at a distance of one mile from the site will range  
24 between 37 and 49 dba." unquote.

25 This is obviously -- these are obviously

1 numbers that I took from the application; and  
2 without given a chance to review the application,  
3 there's no way I can answer that.

4 HEARING OFFICER WILLIAMS: Do you want  
5 us to take official notice of the --

6 MR. WHEATLAND: I do. I'm going to ask  
7 a few more questions, though, on this one.

8 On the next page -- yes, please, if you  
9 would take official notice, I'd make that request.

10 HEARING OFFICER WILLIAMS: Okay, we will  
11 take official notice of the High Desert AFC, the  
12 section on noise.

13 MR. WHEATLAND: You describe here the  
14 City of Victorville's general plan noise element.  
15 And then below that you describe the City of  
16 Victorville municipal code.

17 Is it the staff's position that the San  
18 Joaquin municipal code is applicable to this  
19 project?

20 MR. BAKER: Can you please explain your  
21 question to me?

22 MR. WHEATLAND: Let's start with the  
23 City of San Joaquin municipal code, the section of  
24 the code that deals with nuisances.

25 MR. BAKER: Wait, --



1 MR. WHEATLAND: Is --

2 MR. BAKER: -- wait, wait, are you  
3 referring to the project in the document we're  
4 looking at now, --

5 MR. WHEATLAND: All right, I'm --

6 MR. BAKER: -- or are you referring to  
7 the project --

8 MR. WHEATLAND: -- I'm going to lay a  
9 foundational question, then I'm going to ask you a  
10 question about this exhibit.

11 MR. BAKER: Please try not to confuse  
12 me.

13 MR. WHEATLAND: I'll try my best. I  
14 really am. With respect to the City of San  
15 Joaquin, there is --

16 MR. BAKER: Okay, we're talking now  
17 about the San Joaquin Valley Energy Center  
18 project?

19 MR. WHEATLAND: San Joaquin Valley  
20 Energy Center, yes.

21 MR. BAKER: The project that brought us  
22 here this evening?

23 MR. WHEATLAND: That's the one that  
24 brought us here this evening.

25 There is a municipal code section to

1 deal with nuisances, correct?

2 MR. BAKER: I'm going to refer you to  
3 Mr. Thiessen; he's the author of that section.

4 MR. WHEATLAND: I take is, so you're not  
5 familiar with those, Mr. Baker?

6 MR. BAKER: Mr. Thiessen authored the  
7 section. He is the best person at this table to  
8 answer your question.

9 MR. WHEATLAND: All right, that's fine.  
10 All right.

11 MR THIESSEN: Yes, sir?

12 MR. WHEATLAND: You're familiar with  
13 that section of the ordinance?

14 MR THIESSEN: Yes, sir.

15 MR. WHEATLAND: Is it the staff's  
16 position that that's an applicable LORS?

17 MR THIESSEN: Yes.

18 MR. WHEATLAND: All right. Would you  
19 please read Mr. Baker's testimony here regarding  
20 the City of Victorville municipal code?

21 HEARING OFFICER WILLIAMS: Now here, are  
22 you talking about -- are you back to --

23 MR. WHEATLAND: Yes, I'm back now to 4B-  
24 13.

25 MR THIESSEN: The City of Victorville

1       municipal code --

2               MR. WHEATLAND:  Don't read out loud;  
3       just read it to yourself.

4               MR THIESSEN:  Oh, okay.

5               MR. WHEATLAND:  It's in the record so we  
6       don't have to burden the transcript.

7               MR THIESSEN:  Yes.

8               MR. WHEATLAND:  All right.  Now Mr.  
9       Baker says here that due to the lack of  
10      quantifiable measures the noise ordinance is of  
11      little use in establishing permissible noise  
12      levels that emanate from a source such as the High  
13      Desert Power Plant.

14              Why is it you find the San Joaquin  
15      nuisance ordinance to be applicable?

16              MR THIESSEN:  Well, I haven't reviewed  
17      the full Victorville municipal code, so I'm just  
18      going to take this paragraph as all I know about  
19      it.  From this description it indicated -- Steve  
20      indicates that there's no quantitative standards  
21      for judging excessive noise.

22              In contrast, the San Joaquin municipal  
23      code indicates that prima facie evidence of a  
24      nuisance is if the intruding noise level exceeds  
25      the ambient noise level by five decibels.  That's

1 a quantitative type of ordinance.

2 MR. WHEATLAND: Okay. Thank you, that  
3 answers my question exactly.

4 And finally, Mr. Baker, in this  
5 particular case, and you've testified you were the  
6 responsible staff witness --

7 MR. BAKER: This particular case being  
8 High Desert or San Joaquin?

9 MR. WHEATLAND: Yes, High Desert. High  
10 Desert.

11 MR. BAKER: Thank you.

12 MR. WHEATLAND: Did staff recommend a  
13 prescriptive standard?

14 MR. BAKER: Do I have a chance to go  
15 back and revisit my entire noise chapter? Or am I  
16 supposed to guess or --

17 MR. WHEATLAND: Well, if you recall.

18 MR. BAKER: I don't recall because this  
19 was several years ago that I wrote this.

20 MR. WHEATLAND: All right.

21 MR. BAKER: The document you provided is  
22 even dated January 20, 1999.

23 MR. WHEATLAND: That's right.

24 MR. KRAMER: If it helps, you're allowed  
25 to take time to review what's here.

1 MR. WHEATLAND: Well, take a look  
2 perhaps at Noise-5; maybe that will help you.

3 MR. FREITAS: Is this an opportunity to  
4 go to the restroom?

5 MR. WHEATLAND: And at -- I'm sorry, --  
6 take --

7 HEARING OFFICER WILLIAMS: Not quite.

8 MR. WHEATLAND: -- take a look at Noise-  
9 6.

10 MR. BAKER: Go ahead.

11 MR. WHEATLAND: All right, did the staff  
12 recommend a prescriptive standard?

13 MR. BAKER: The prescriptive standard is  
14 no increase greater than five dba measured in LEQ  
15 at any sensitive receptor.

16 MR. WHEATLAND: Thank you very much.  
17 May we be off the record for one minute?

18 HEARING OFFICER WILLIAMS: Yeah, it's  
19 time for a break.

20 MR. WHEATLAND: I think I can -- just  
21 before you break I think --

22 HEARING OFFICER WILLIAMS: Okay. We're  
23 off the record.

24 (Off the record.)

25 HEARING OFFICER WILLIAMS: Are we ready?

1 MR. WHEATLAND: Yes, I'm ready, thank  
2 you. I want to thank the Committee for its  
3 patience, the witnesses for their cooperation, and  
4 Mr. Freitas for not interposing his commentary.  
5 And I just have two minor administrative matters  
6 to clear up, and then that will conclude my cross.

7 The first is I'd like to reserve an  
8 exhibit number for the form that Mr. Thiessen  
9 indicated he would provide us.

10 HEARING OFFICER WILLIAMS: Okay.

11 MR. WHEATLAND: So if we could identify  
12 an exhibit number. I'm not moving it into  
13 evidence at this time, but just to identify an  
14 exhibit number.

15 HEARING OFFICER WILLIAMS: Okay. Where  
16 were we?

17 MR. WHEATLAND: Next one --

18 UNIDENTIFIED SPEAKER: Is that the  
19 staff? That would be 2Y.

20 MR. WHEATLAND: No, it would be  
21 applicant, I think.

22 HEARING OFFICER WILLIAMS: Applicant.

23 MR. WHEATLAND: Applicant next in order,  
24 please.

25 UNIDENTIFIED SPEAKER: 4B-14.

1 MR. WHEATLAND: 4B-14. Thank you.

2 And second of all, I would like to just  
3 clarify with Mr. Buntin with respect to exhibits  
4 2U and 2V that these are intended to reflect the  
5 relative relationship of the descriptors and are  
6 not intended to represent the actual performance  
7 or operation of the San Joaquin facility, is that  
8 right?

9 MR. BUNTIN: That's certainly true of  
10 2U, that was just a generalized drawing. 2V was  
11 meant to be a graphic representation of the  
12 numbers listed in the final staff assessment, and  
13 in the applicant's testimony for the proposed  
14 noise standard.

15 MR. WHEATLAND: All right, then if  
16 that's the case, could you give me more  
17 description for the value on 2V that's at the  
18 bottom of the table that's shown as L90?

19 MR. BUNTIN: Yes, yes, certainly. That  
20 would be -- I was referring to the L90 values for  
21 the quietest four-hour periods, and you can see  
22 it's generalized to show it just a little below  
23 30. And if you remember for site 1, I believe it  
24 is, or G1, that the values in the table are 28 and  
25 29.

1 MR. WHEATLAND: Okay, thank you. And  
2 with that clarification I would have no objection  
3 to the introduction of exhibits 2U and 2V.

4 HEARING OFFICER WILLIAMS: Okay, those  
5 are admitted.

6 MR. WHEATLAND: And that completes my  
7 cross-examination.

8 HEARING OFFICER WILLIAMS: Thank you,  
9 sir.

10 MR. FREITAS: What are we going to  
11 number those?

12 HEARING OFFICER WILLIAMS: They --

13 MR. FREITAS: Oh, they are, 2U and 2V.  
14 Sorry.

15 HEARING OFFICER WILLIAMS: Yeah. Are  
16 you ready to go with your cross-examination?

17 MR. FREITAS: Yeah.

18 HEARING OFFICER WILLIAMS: Okay, let's  
19 do that.

20 MR. FREITAS: As close as I'll ever be.  
21 Now I'm limited to only these witnesses, right? I  
22 can't go back over here, right?

23 HEARING OFFICER WILLIAMS: Right. Now,  
24 but -- off the record, let's go off the record.

25 (Off the record.)



1 HEARING OFFICER WILLIAMS: Back on the  
2 record.

3 CROSS-EXAMINATION

4 BY MR. FREITAS:

5 Q Mr. Butler, --

6 MR. BUNTIN: Buntin.

7 MR. FREITAS: Buntin, I'm sorry, Mr.  
8 Buntin --

9 MR. BUNTIN: As close as any.

10 MR. FREITAS: All right. On 2U and 2V  
11 exhibits, --

12 MR. BUNTIN: Yes.

13 MR. FREITAS: -- that we just put in,  
14 this will be hard to describe on testimony for  
15 just written testimony without actually drafting  
16 what I'm about to ask you the question about, but  
17 yesterday when you drew this graph 2U, you also  
18 took a piece of paper, and it's not reflective on  
19 these two -- it doesn't represent your total  
20 conclusions yesterday in your testimony, because  
21 you took a piece of paper, do you recall, and you  
22 put it over the top of -- like this?

23 MR. BUNTIN: Top of 2U?

24 MR. FREITAS: Top of 2U.

25 MR. BUNTIN: Correct.

1           MR. FREITAS: And you said everything  
2 underneath that would no longer be -- could you  
3 explain what you --

4           MR. BUNTIN: The point I was trying to  
5 make was that if you -- probably the easiest one  
6 to refer to this graphic, if you look at that L90  
7 line, --

8           MR. FREITAS: Right.

9           MR. BUNTIN: -- and if you look at the  
10 staff's proposed standard as being ten decibels  
11 above that, I was intending to draw a line on this  
12 graph that showed the L90 plus ten. And when you  
13 lay that piece of paper on there you can see that  
14 that would cover up, you really couldn't see it as  
15 well as I could, it covered up those noise levels,  
16 but it didn't completely -- I think I made the  
17 comment it didn't completely mask them.

18           But the point was that the L90 plus ten  
19 in this example would have been above most of the  
20 nighttime noise levels, except for these large  
21 events on my little graphic here.

22           MR. FREITAS: And that relates to -- how  
23 does that relate to the effect? I mean what does  
24 that do scientifically and technically-wise? What  
25 does that actually -- how does that affect the --

1           MR. BUNTIN: Well, subjectively it's  
2       saying that there's another sound present which  
3       will interfere with your ability to hear the other  
4       sounds insofar as it has the same kind of sound,  
5       has the same frequency content.

6           So, for example, if you had the power  
7       plant with its relatively broadband noise at ten  
8       decibels above say the noise of distant traffic,  
9       you would tend not to hear very much of that  
10      distant traffic in that situation.

11          MR. FREITAS: So, as a real simple  
12      example, if I'm driving down the road and I  
13      usually drive with my window down and I listen for  
14      cars for oncoming, for side traffic, for cross-  
15      traffic, I usually listen to those cars by the  
16      sound. And I determine there's a car coming  
17      approaching, for example, to my left. If I'm in  
18      the vicinity of this noise level there's a chance  
19      that I may not now hear that car?

20          MR. BUNTIN: No, that wasn't the point.  
21      Actually the point was the larger noise events  
22      would still be audible. But the quieter noise  
23      sources would be less audible. Some at the very  
24      quietest level would be masked so you couldn't  
25      hear them, but you'd still be able to pick things

1 out. It just wouldn't be the same environment.

2 MR. FREITAS: So would it be masking  
3 those noises that would be considered the ones  
4 that are in the quietest four-hour period that Mr.  
5 Thiessen brought in?

6 MR. BUNTIN: It would be masking the  
7 very quietest sounds.

8 MR. FREITAS: Would it be the ones in  
9 that four-hour period?

10 MR. BUNTIN: To the extent that they  
11 sounded the same, if you will, and I'm only  
12 qualifying that because if it was chirp or a  
13 squawk, then a general broadband noise wouldn't  
14 cover that up.

15 MR. FREITAS: It wouldn't cover an  
16 approaching fire engine, for example?

17 MR. BUNTIN: Oh, heavens, no. No.

18 MR. FREITAS: I don't know which one of  
19 these gentlemen could answer this question best,  
20 so maybe none of you can answer at all, but I'll  
21 just go ahead and ask it.

22 Is there a relationship to sounds that  
23 we see and sounds that we don't see?

24 MR. THIESSEN: Hear?

25 MR. FREITAS: Hear, yeah, hear, I'm

1       sorry. Is there a relationship to -- I'm sorry,  
2       excuse me, --

3               (Parties speaking simultaneously.)

4       BY MR. FREITAS:

5               Q     Is there any relationship to if I see  
6       the thing that I think is making the noise, do I  
7       hear it better because I see it versus if I don't  
8       see a thing that's making the noise, do I hear it  
9       any less or any more?

10              MR. BUNTIN: I'm not aware of anything  
11     that would indicate that. I don't -- I think, you  
12     know, you can close your eyes and you will hear  
13     things and you open your eyes and you can possibly  
14     locate it. Matter of fact, you can probably  
15     locate it without your eye.

16              MR. FREITAS: What my point is is that  
17     there's sensories, studies shown that blind people  
18     can hear better than people with eyes, and I'm  
19     just wondering.

20              MR. BUNTIN: I don't think that's the  
21     case we're talking about there. You know, those  
22     are people who have to --

23              MR. FREITAS: Have to get --

24              MR. BUNTIN: -- really concentrate on  
25     things, and so they've --

1 MR. FREITAS: Their sensory perception  
2 goes -- did you want to answer that question, Mr.  
3 Baker?

4 (Laughter.)

5 MR. BAKER: No.

6 (Laughter.)

7 MR. FREITAS: Okay. This is for all  
8 three of you, so you can take your chance and see  
9 whoever wants to respond.

10 I'm going to use this drawing up here.  
11 Back to the Bellagio effect here. If we were to  
12 put in this area surrounding the power plant a  
13 dense forest type of a tree, like a redwood,  
14 densely planted in this area here, this area along  
15 the railroad track here, and then in this area  
16 over here and this area over here. And just kind  
17 of, you know, engulf this plant, surround it with  
18 trees of redwood type size and density.

19 Could that affect the sound levels, the  
20 noise levels?

21 MR. BUNTIN: Can I -- or do you want --

22 MR THIESSEN: Yes, absolutely.

23 (Laughter.)

24 MR. BUNTIN: Well, I'll answer it but  
25 through kind of anecdotal response to that. The

1 kind of rule of thumb that people in the business  
2 much longer than I used to use was that 100 feet  
3 of dense forest, and that would be, you know, with  
4 evergreens basically, could reduce traffic noise  
5 by about five decibels.

6 And the other story that I heard the  
7 definition of that is that -- of a dense forest is  
8 if you can see somebody walking through there in a  
9 white suit, or a woman in a white dress, if you  
10 can't see them. If you can't see them.

11 So, I mean we're talking about a very  
12 dense vegetation situation. And it would have to  
13 be in a position to block that noise source to do  
14 any good.

15 So, normally in California we don't -- I  
16 don't know of anybody that routinely recommends  
17 using that as a mitigation measure because it's  
18 hard to get that density of forest here.

19 MR. FREITAS: Yeah, I understand. I was  
20 just basically looking for a -- okay, another  
21 scenario.

22 If we took the same space here and we  
23 mounded up dirt mounds that were approximately  
24 seven to eight feet high around both sides of  
25 the -- all four sides of the structure or the side

1 of the power plant, would that affect the noise  
2 level?

3 MR. BUNTIN: Well, the applicant might  
4 have a better response to that than I would, but  
5 in general, if you had a berm seven or eight feet  
6 high it's only going to block the noise sources  
7 that are lower than seven or eight feet.

8 And so it kind of depends on where the  
9 preponderance of noise sources are in the power  
10 plant. And as you're probably aware, they're  
11 ranged all the way from ground up to the top of  
12 the stacks.

13 So you might detect a small change, and  
14 you might not, depending on the plant design. And  
15 they'd be better equipped to answer that question  
16 than I.

17 MR. FREITAS: Okay, so what you're  
18 saying then, then I could walk and stand on any  
19 side of the power plant and I will hear different  
20 noise levels?

21 MR. BUNTIN: Well, that isn't really  
22 what I said. Is that your question?

23 MR. FREITAS: Okay. Yeah.

24 (Laughter.)

25 MR. BUNTIN: Well, yeah, I mean there



1 are different sources in different places around  
2 the power plant and different noise levels  
3 depending on where you are, sure.

4 MR. FREITAS: Okay, so when you guys did  
5 your study and you formulated your opinions and  
6 your conclusions, did you take into consideration,  
7 or do you know which sides of the power plant you  
8 took your noise levels from?

9 MR. BUNTIN: I believe the noise level  
10 assumptions built, and correct me if I'm wrong,  
11 but I believe the testimony reflects that they're  
12 based on the projections by the applicant, mostly  
13 from that figure showing the noise contours, 8.5-  
14 2.

15 MR THIESSEN: Well, the projected noise  
16 levels from the plant provided by the applicant  
17 were at certain key residential locations around  
18 the plant. And, of course, their modeling I'm not  
19 totally familiar with the details of it, but if  
20 it's like most noise models, it takes into account  
21 the individual sources from the plant, their  
22 location high or low, above the ground; takes into  
23 account the frequency characteristics of the  
24 source, whether they emit a lot of high frequency  
25 noise or low frequency noise or probably a mixture

1 of all of those.

2 Other things that can influence the  
3 propagation of noise, shielding and perhaps  
4 reflections, all sorts of things that at least  
5 theoretically can be modeled. And from that, and  
6 also certain types of noise sources are more  
7 directional than others. They put out more noise  
8 in one direction than another direction, just  
9 depending on what they are.

10 Just some of those all go into the  
11 model. And from that the noise levels at these  
12 receiver locations are predicted. Largely based,  
13 probably mostly based on the distance. That's  
14 probably the largest determiner of what the noise  
15 level is, is the actual distance of that residence  
16 to the plant.

17 MR. FREITAS: On my way up here I  
18 noticed, kind of hit me in the left side of my eye  
19 and I didn't even pay attention to it until now,  
20 drawing a reference to it, is that there was a --  
21 I saw a, and they've relatively got to be very  
22 inexpensive, these partitions that are put up at  
23 airports where a jet would deflect the -- I guess  
24 they're sound deflectors.

25 MR. BUNTIN: Is that your question?

1 MR. FREITAS: Well, are you familiar  
2 with a sound deflector at airports? Do airports  
3 use sound deflectors?

4 MR. BUNTIN: No, those are --

5 MR. FREITAS: What are those?

6 MR. BUNTIN: What you're typically  
7 seeing is a blast fence.

8 MR. FREITAS: A blast fence.

9 MR. BUNTIN: A blast deflector.

10 MR. FREITAS: Do they have sound  
11 deflectors in any industry that you're aware of?  
12 That would work like a blast deflector.

13 MR. BUNTIN: Yes, I think the applicant  
14 even referred to the use of barriers and some --  
15 yeah, certainly. You can use barriers in that  
16 sense.

17 MR. FREITAS: So it's part of the  
18 applicant's mitigation to use barriers?

19 MR. BUNTIN: It's been discussed in the  
20 testimony regarding onsite barriers at some homes,  
21 yes.

22 MR. FREITAS: Oh, I'm not talking about  
23 at the homesite. I'm talking about at the plant.

24 MR THIESSEN: Well, again, they are  
25 probably like better equipped to answer that, they

1 know the details of what they're designing at  
2 their plant.

3 But, correct me if I'm wrong, guys, but  
4 I don't recall noise barriers being specifically  
5 recommended on the project site, itself. But,  
6 again, I would defer to them because they're  
7 familiar with the details of the design.

8 MR. FREITAS: Well, I understand that,  
9 but I don't get a chance to go there yet. So  
10 while I'm here --

11 MR THIESSEN: I'll tell you what I know,  
12 then.

13 MR. FREITAS: Okay. Mr. Baker, in your  
14 opinion would a noise barrier help deflect some of  
15 the noises that are coming off this plant?

16 MR. BAKER: Obviously if the  
17 circumstances are right. As an example, the Pico  
18 Power project, which is currently going through  
19 the Commission's siting process, is located in an  
20 industrial area in Santa Clara.

21 And because of noise LORS limiting the  
22 noise that may emanate offsite, the applicant  
23 proposes to put barrier walls around several sides  
24 of the project simply to comply with the LORS.

25 But that's, you know, a specific

1 instance. Whether such barriers would be of any  
2 use at all at San Joaquin Valley is a question  
3 that I can't answer.

4 MR. FREITAS: That's fair. Mr. Baker, I  
5 noticed that you were asked some questions about  
6 the San Joaquin municipal code, and it was a  
7 quantitative -- I don't know if you gave a -- I  
8 don't know if I understood the answer, but do you  
9 understand, are you well versed in the San Joaquin  
10 municipal code?

11 MR. BAKER: No, I didn't author that  
12 section. Perhaps you want to ask your questions  
13 of Mr. Thiessen who did write the section.

14 MR. FREITAS: Did you --

15 MR THIESSEN: Well, I didn't write the  
16 section of the code; no, I didn't write the code.

17 MR. FREITAS: Are you well versed in the  
18 San Joaquin code?

19 MR THIESSEN: Well, versed? I've read  
20 it and I am familiar with its concept because it's  
21 very similar to the ordinance in the City of  
22 Fresno uses, very very similar.

23 MR. FREITAS: Do you know that it's very  
24 fluid and changes like a chameleon, depending on  
25 what necessitates the need to have the code adapt

1 to incoming business or industry?

2 In other words, did you study the code  
3 before applicant submitted their application to  
4 put in a power plant versus how the code changed  
5 after that application was submitted?

6 MR THIESSEN: No, sir. I only became  
7 familiar with the version the code is now when I  
8 started reviewing the AFC for the facility.

9 MR. FREITAS: Okay. Have you seen a  
10 LAFCO, any LAFCO documents that have certified  
11 that the annexation of the property that the site  
12 is on, the 83-acre industrial site, has been  
13 accepted into the annexation?

14 MR. WHEATLAND: I'd object to the  
15 question. Beyond the scope.

16 HEARING OFFICER WILLIAMS: Sustained.

17 MR. FREITAS: Mr. Baker, when you were  
18 asked about the code, the San Joaquin code, and  
19 how it relates to the annexed property, are you  
20 under the impression that the property is annexed  
21 into the City of San Joaquin?

22 MR. BAKER: When I was asked about the  
23 code I passed the ball to Mr. Thiessen.

24 MR. FREITAS: Mr. Thiessen, when you  
25 studied the code were you aware that the -- were

1       you under the impression that the property was  
2       annexed into the City?

3               MR THIESSEN: I was under no impression  
4       one way or the other about the question of  
5       annexation.

6               MR. FREITAS: Would it matter either  
7       way?

8               MR THIESSEN: Insofar?

9               MR. FREITAS: Your conclusions or your  
10      impressions?

11              MR THIESSEN: As to what the code --

12              MR. FREITAS: Said or didn't say.

13              MR THIESSEN: No, I don't believe so.

14              MR. FREITAS: Because your basis is  
15      based on what CEC regulations are --

16              MR THIESSEN: Well, my understanding of  
17      the code --

18              MR. FREITAS: Or standards, CEC  
19      standards, is that correct?

20              MR THIESSEN: My understanding of the  
21      City of San Joaquin municipal code is only the  
22      code, itself, what it says, the copy that was  
23      provided to me. I have no knowledge beyond that.

24              If your question was, was I assuming the  
25      project, itself, was in the City?

1 MR. FREITAS: Yes.

2 MR THIESSEN: I was aware of that, yes.

3 MR. FREITAS: Okay. I believe you  
4 testified that this power plant site -- I mean Mr.  
5 Baker, I think this --

6 MR. BUNTIN: Well, go ahead.

7 MR. FREITAS: I mean Mr. --

8 MR. BUNTIN: We'll bounce it around.

9 MR. FREITAS: -- Mr. Buntin. I believe  
10 that you testified that this was the quietest --  
11 maybe it was you, Mr. Thiessen, this was the  
12 quietest area that you've ever seen for a power  
13 plant site?

14 MR. BAKER: Well, --

15 MR. FREITAS: That was you, Mr. Baker?  
16 Okay, Mr. Baker. Let's figure out --

17 HEARING OFFICER WILLIAMS: I think you  
18 could just suggest it to all three of them. I  
19 mean --

20 MR. WHEATLAND: Could we just go off the  
21 record for a second?

22 HEARING OFFICER WILLIAMS: Okay, off the  
23 record.

24 (Off the record.)

25 HEARING OFFICER WILLIAMS: Let me just



1 say that Mr. Freitas, during the testimony, has  
2 used a figure VR-128A-1 to point out certain  
3 features. And that figure is part of exhibit 3K-  
4 2, which is a data response of the applicant.

5 So, Mr. Freitas, do you want to --

6 MR. FREITAS: Okay, back to the quietest  
7 power plant site, is that a scientific conclusion  
8 or just a personal opinion?

9 MR. BAKER: That's solely a personal  
10 opinion based on my history here, having been  
11 involved in the noise analysis of every project to  
12 go through this Commission siting process since  
13 some time in 1992.

14 MR. FREITAS: Are you aware that the  
15 City of San Joaquin used to be a robust and  
16 hustling and bustling ag manufacturing  
17 municipality at one time?

18 I've been there for 23 years and there  
19 used to be garlic processing plants, seed  
20 processing plants, melon/cantaloupe processing  
21 plants. They'd run 24 hours, 24/7. Sometimes  
22 they'll start up at 5:00 in the morning.  
23 Sometimes they'll go all night long.

24 And there were at least, to my  
25 knowledge, five of those projects and plants

1 working and going at the same time.

2 I'm just curious if you ever did any  
3 historical referencing to, you know, past projects  
4 and past noise levels from those operations that  
5 used to run and bustle, since the agricultural  
6 economy has been stifled. And we've had a pretty  
7 economic downshift. It's affected the City of San  
8 Joaquin, but it used to employ 3000 or 4000  
9 seasonal people at one time.

10 I was just curious if you had done any  
11 study -- if your study included any of that,  
12 reference to any of that?

13 MR. BAKER: No.

14 MR. FREITAS: No? Were you aware of any  
15 of that?

16 MR. BAKER: No.

17 MR. FREITAS: If you had any knowledge  
18 or had done any study like that, would that  
19 influence your numbers at all?

20 MR. BAKER: Probably not.

21 MR. FREITAS: And why?

22 MR. BAKER: Because the proposed project  
23 was evaluated in reference to the existing noise  
24 environment.

25 MR. FREITAS: Okay. Would it change

1       your -- would it affect your opinion, your  
2       personal opinion, of it being the quietest spot  
3       that has ever -- a power plant's ever been placed?

4               MR. BAKER:  No.  In my experience this  
5       is the quietest location that I've ever dealt  
6       with.

7               MR. FREITAS:  It's probably one of the  
8       poorest you've ever dealt with.

9               Is Mr. Walters going to testify?  Or  
10      he's gone, huh?

11              MR. BAKER:  He's gone.

12              MR. KRAMER:  You said you didn't need  
13      him.

14              MR. FREITAS:  I thought we were going to  
15      call him back if we needed him.  I don't need him.

16              MR. TRASK:  I don't believe Mr. Walters  
17      testified in the area of noise.

18              MR. KRAMER:  That's true.  That's  
19      another good reason.

20              (Laughter.)

21              MR. FREITAS:  Does not matter to me.

22              HEARING OFFICER WILLIAMS:  Yeah, that  
23      was some hours ago.

24              MR. FREITAS:  Okay.  Is there a direct  
25      relationship to the statistical sound level

1 quality dba's as they're represented to background  
2 noise versus ambient noise?

3 MR. BUNTIN: As I testified yesterday,  
4 the ambient noise term refers to everything that's  
5 going on which includes all the statistical  
6 descriptors.

7 MR. FREITAS: Would you, all three of  
8 you, would you conclude and agree that you all  
9 have the same understanding of the difference  
10 between ambient and background noise?

11 MR. BUNTIN: Yes.

12 MR. FREITAS: Mr. Baker?

13 MR. BAKER: The three of us are in  
14 concert.

15 MR. FREITAS: Okay.

16 MR. TRASK: The three tenors.

17 MR. KRAMER: No, the three noise guys.

18 (Laughter.)

19 MR. FREITAS: Are any of you gentlemen  
20 familiar with the General Electric Company's  
21 equipment in regards to noise suppression or stack  
22 silencers?

23 MR. BAKER: What do you mean by  
24 familiar? I know that there are such devices are  
25 available. I'm not sure how many of them are

1 available directly from GE, and how many are  
2 available from other contractors and suppliers.

3 MR. FREITAS: Okay. Do you know of the  
4 most current technology that's available?

5 MR. BAKER: Not in detail. I know that  
6 equipment is available that will silence the  
7 machines we're dealing with here.

8 MR. FREITAS: I know you don't look at  
9 things like this, but from a cost perspective and  
10 efficiency and justifications in models for  
11 business plans and success and failures, for  
12 profit and loss, is it your opinion that  
13 suppressants, that noise stack silencers or noise  
14 suppressants that are made a part of or a  
15 condition in the power industry are a reasonable  
16 condition?

17 MR. BAKER: I know that noise is cheap  
18 and quiet is expensive.

19 MR. FREITAS: And you say that in a full  
20 context of the term that I'm taking, I believe in  
21 the full context of that statement is politically,  
22 socially, liability, all those other things, you  
23 mean of the impact from the community, that the  
24 long-range --

25 MR. BAKER: No, sir, I mean that if you

1 want to build --

2 MR. FREITAS: -- noise pollution, for  
3 example, --

4 MR. BAKER: -- if you want to build a  
5 power plant and make it quieter you have to spend  
6 more money. That's all I mean.

7 MR. FREITAS: Okay. That's what I was  
8 trying to get at.

9 On exhibit 4B-2, I believe it was 4B-2  
10 through 4B-8, there was a series of letters that  
11 were brought in.

12 MR. KRAMER: We had one of those we  
13 offered yesterday, 4B-3, as a representative  
14 sample.

15 MR. FREITAS: Okay, I'm not sure, Mr.  
16 Walters, --

17 HEARING OFFICER WILLIAMS: Williams.

18 MR. FREITAS: I'm not sure, Mr.  
19 Williams, --

20 MR. BAKER: That's two.

21 MR. FREITAS: Is this 2 -- is this going  
22 to be 2?

23 HEARING OFFICER WILLIAMS: 4B-2?

24 MR. FREITAS: Yes.

25 MR. WHEATLAND: Yes.

1 MR. FREITAS: Is this 2?

2 MR. KRAMER: Well, what -- this is the  
3 one with the letter signed by Bastiani.

4 MR. HARRIS: That's 4B-3.

5 MR. FREITAS: This is 4B-3? Okay. Mr.  
6 Baker, in this letter reference was made and  
7 testimony was given yesterday whereby you stated,  
8 and I quote, "that the line in this letter that  
9 states, we will build using extensive noise  
10 reduction technology, it says -- at the beginning  
11 of the sentence -- strike that.

12 The beginning of the sentence starts  
13 with: We understand that the SJVEC will be built  
14 using extensive noise reduction technology." And  
15 I recorded you as saying that is just not true.  
16 Do you still stand by that statement and position  
17 today?

18 MR. BAKER: Yes, I do.

19 MR. FREITAS: Why?

20 MR. BAKER: I explained that yesterday  
21 in my direct testimony.

22 MR. FREITAS: And you still stand by  
23 that explanation?

24 MR. BAKER: Yes.

25 MR. FREITAS: When you made that

1 statement were you referring to the -- would it be  
2 safe to say that your reference was more towards  
3 directing notice that the noise reduction  
4 technology was just not, part was not going to be  
5 implemented in the same way that it was being  
6 represented?

7 I'm trying to define -- or would you say  
8 that the whole -- did you make reference to it not  
9 being true as the whole statement was a  
10 misrepresentation?

11 MR. BAKER: I explained in my testimony  
12 yesterday that I did not believe the project, as  
13 proposed, used extensive noise reduction  
14 technology.

15 MR. FREITAS: As described in this  
16 statement, in this sentence?

17 MR. BAKER: As described in the  
18 application for certification and subsequent  
19 documents.

20 MR. FREITAS: Oh, as described in the  
21 what?

22 MR. BAKER: The application for  
23 certification. That was the original book from  
24 Calpine that got this whole process started.

25 MR. FREITAS: Okay, the next sentence



1 was that SJVEC's offer to complete additional  
2 noise reduction reducing upgrades to our home is  
3 appreciated and the low residual noise level will  
4 be acceptable to us.

5 I believe you also had a problem with  
6 that statement?

7 MR. BAKER: That's correct.

8 MR. FREITAS: Now, that statement there  
9 does not really address technology or equipment,  
10 per se. It makes a statement about noise-reducing  
11 upgrades. Would you indulge me just for a second  
12 and just tell me what part about that entire  
13 sentence that doesn't fit?

14 MR. BAKER: The phrase the low residual  
15 noise level is what I took offense at. I don't  
16 believe, and it's been explained in our staff  
17 assessment and in the testimony that the three of  
18 us delivered yesterday, I don't believe that there  
19 will be a low residual noise level after the power  
20 plant is built.

21 MR. FREITAS: Okay, this document, Mr.  
22 Baker, and don't get me wrong here, I'm not trying  
23 to make it look like you don't understand  
24 documents or how they're structured, but I believe  
25 that this document is a letter from Floyd and

1 Lillian Bastiani directed to Mr. Trask.

2 And I believe -- so I just want to  
3 understand, because I want to be clear on this  
4 because this really had an effect on me yesterday.  
5 To me these folks here, Floyd and Lillian  
6 Bastiani, really don't have or it may be  
7 questionable, or hasn't been determined in this  
8 proceeding, if they have the technological  
9 background or ability to determine what a low  
10 residual noise level is.

11 If I'm reading this right they are the  
12 ones that are making the statement. Is it your  
13 testimony from yesterday and today that this  
14 document was manipulated in some way, or  
15 constructed to be a rubber-stamp document with  
16 rubber-stamp language that many other people  
17 signed and were either coerced to sign or didn't  
18 sign freely, or for some reason were misled to get  
19 their signatures on it?

20 MR. BAKER: The point of my testimony  
21 was that it appears to me that the people who  
22 signed these letters did not have the information,  
23 background and understanding necessary to actually  
24 make such a statement.

25 MR. FREITAS: So, it would be fair to

1 say then in the context of your response then that  
2 possibly the applicant really would not have any  
3 influence with the parties that actually authored  
4 this document to influence their understanding of  
5 what low residual noise levels are?

6 MR. BAKER: Congratulations, you have  
7 thoroughly confused me.

8 MR. FREITAS: Okay, let me try Matlock  
9 on you.

10 If you had received this document from a  
11 peer with equal credentials as yourself, and this  
12 language was given to you by a peer with equal  
13 credentials, would your response be the same as it  
14 is now?

15 MR. BAKER: I can't imagine that  
16 occurring. If someone who understood the  
17 situation saw this letter I doubt that they would  
18 sign it, so I really can't speculate. I can't go  
19 there.

20 MR. FREITAS: Okay, so then it would be  
21 safe to say that it's possible that the people who  
22 authored this letter just don't understand the  
23 impact of the language that they used in this  
24 letter?

25 MR. BAKER: That's what I believe.

1 MR. FREITAS: Thank you. That's all.

2 HEARING OFFICER WILLIAMS: Okay, staff,  
3 you had some redirect?

4 MR. KRAMER: Yes.

5 REDIRECT EXAMINATION

6 BY MR. KRAMER:

7 Q Mr. Thiessen, early on in your cross-  
8 examination you made a response to a question  
9 about the difference between arithmetic averaging  
10 and geometric or logarithmic --

11 MR THIESSEN: Yes.

12 MR. KRAMER: And you wanted to amplify  
13 your response but you were cut off. So I wanted  
14 to ask you to continue with your edification, if  
15 you can recall it. If you can't that's fine.

16 MR THIESSEN: I can't recall exactly.

17 MR. KRAMER: It may have been too much  
18 time.

19 MR THIESSEN: I don't think I wanted to  
20 make a point beyond saying that in this case for  
21 these numbers that there's virtually no difference  
22 between averaging arithmetically or  
23 logarithmically.

24 And I guess that I was taken aback by  
25 the comment from the applicant on what I believed

1 was such an extremely unimportant issue in light  
2 of the other substantial issues.

3 MR. KRAMER: And just to be clear, why  
4 do you think it was unimportant?

5 MR THIESSEN: Because there's virtually  
6 no difference between the two in this case. And  
7 by focusing on minutiae, hope there's no offense,  
8 it tends to mask or disguise the larger issues of  
9 what I believe are substantial increases in noise  
10 due to the project.

11 MR. KRAMER: Okay. Please turn to page  
12 4.6-11 of your testimony, table 5, in specific.

13 MR THIESSEN: Okay.

14 MR. KRAMER: And looking to the right-  
15 most column, resulting increase in ambient noise  
16 levels.

17 MR THIESSEN: Yes.

18 MR. KRAMER: For all but the G2 site the  
19 entry there is plus ten. Could you explain why  
20 for G2 it's only plus five decibels?

21 MR THIESSEN: Well, that relates -- G2  
22 represents the one location within the City of San  
23 Joaquin. And in that case the thing that seems to  
24 be driving the allowance plant noise level is the  
25 ordinance of the City of San Joaquin which

1 basically sets a violation of their ordinance in a  
2 residential area if the noise source exceeds the  
3 ambient noise levels by five db or more.

4 So, hence in that case, to satisfy what  
5 I believe is the intent of the City of San Joaquin  
6 noise ordinance, you could not have an increase in  
7 ambient noise levels of more than five decibels.

8 In contrast to the other locations in  
9 Fresno County that are not governed by the City of  
10 San Joaquin, we felt that in order to avoid a  
11 substantial increase which would lead to a  
12 significant impact, a noise level up to ten  
13 decibels over the ambient would be allowable.

14 MR. KRAMER: So is it fair to say that  
15 you applied, in setting your conditions, the most  
16 restrictive standard whether that was the result  
17 of your environmental analysis or your review of  
18 the City or County legal requirement?

19 MR THIESSEN: That's correct.

20 MR. KRAMER: And in the County, is G2  
21 the only receptor that's in the City limits?

22 MR THIESSEN: Yes, sir.

23 MR. KRAMER: The others are in the  
24 County?

25 MR THIESSEN: Yes.

1           MR. KRAMER:  So, looking at the  
2           receptors other than G2, did you apply the County  
3           noise standards for purposes of your LORS  
4           analysis?

5           MR THIESSEN:  Somewhat indirectly in the  
6           sense that in the County areas that if you're able  
7           to achieve an increase of ten decibels or less  
8           over the ambient you automatically satisfy the  
9           County noise ordinance, which allows 45 decibels  
10          or less.

11          MR. KRAMER:  Okay, so --

12          MR THIESSEN:  So in the County areas the  
13          CEQA requirements, in our opinion, take precedent  
14          in the sense that they really control the amount  
15          of noise level to be emitted by the plant.

16          MR. KRAMER:  Or to put it another way,  
17          they required a lower noise level than the County  
18          ordinance?

19          MR THIESSEN:  That's putting it another  
20          way, yes, sir.

21          MR. KRAMER:  Thank you.  What's our next  
22          exhibit number?  I'm guessing Y, as in yankee.  
23          2Y.

24          This is a document undated.  The title  
25          of it is staff assessment addendum guidelines.

1 And this is offered in response to the questions  
2 earlier about why the staff appeared to have  
3 ignored certain comments from the applicant.

4 I'll just ask them, if the applicant's  
5 willing to stipulate that this document was issued  
6 to the staff --

7 MR. WHEATLAND: We'll so stipulate.

8 MR. KRAMER: Then we don't even have to  
9 authenticate it.

10 MR. WHEATLAND: We'll so stipulate.

11 MR. KRAMER: And we'll offer it for the  
12 record.

13 HEARING OFFICER WILLIAMS: Okay, it's  
14 admitted, 2Y.

15 MR. KRAMER: And we are through.

16 HEARING OFFICER WILLIAMS: Okay.  
17 Recross?

18 MR. WHEATLAND: No recross.

19 HEARING OFFICER WILLIAMS: Any  
20 questions, Mr. Freitas?

21 MR. FREITAS: What number was this  
22 exhibit we just did?

23 MR. KRAMER: 2Y-ankee.

24 MR. FREITAS: 2Y-ankee. Damn Yankees.  
25 I think we just went to a code red.



1 MR. KRAMER: Can we excuse the  
2 witnesses? A couple of them are worried about  
3 their parking lots.

4 HEARING OFFICER WILLIAMS: Well, Mr  
5 Freitas, recross, any recross?

6 MR. FREITAS: Yeah, just one quick one,  
7 I think.

8 RECROSS-EXAMINATION

9 BY MR. FREITAS:

10 Q Mr. Thiessen, could you give me a  
11 physical description of G5?

12 MR THIESSEN: G5 appears to be on the  
13 northwest corner of Manning and Yuba Avenue.

14 MR. FREITAS: And are there any  
15 structures between the power plant and that  
16 location?

17 MR THIESSEN: Based on, I'm looking at  
18 figure 8.5-2, there's none indicated on this map  
19 if you drew a line between the center of the  
20 project site and G5, there does not appear to be.

21 MR. FREITAS: And you can look at that  
22 map up there on the screen, and that almost gets  
23 you right there, too. So it would show there's  
24 nothing.

25 MR THIESSEN: Well, I can't see it well

1 enough to --

2 MR. FREITAS: That's okay. All right.  
3 That's it.

4 HEARING OFFICER WILLIAMS: Okay.  
5 Applicant, do you have any rebuttal?

6 MR. WHEATLAND: Yes, I have two very  
7 brief pieces of rebuttal.

8 HEARING OFFICER WILLIAMS: Okay.

9 MR. WHEATLAND: Okay. Just one second,  
10 we'll find it. What I'm going to do is I'm going  
11 to offer Mr. Bastasch on rebuttal just to explain  
12 the basis of that exhibit that we have  
13 distributed, in terms of how he prepared it.

14 And then I'm also going to ask that we  
15 take official notice of the Tesla FSA -- have I  
16 got it right? The FSA.

17 MR. FREITAS: Are we off the record?

18 MR. WHEATLAND: No, we're on the record.

19 MR. KRAMER: We're off, I think, aren't  
20 we?

21 HEARING OFFICER WILLIAMS: No.

22 ASSOCIATE MEMBER GEESMAN: No, we're on  
23 the record.

24 MR. WHEATLAND: So anyway I'm going to  
25 ask --

1 MR. FREITAS: We're on?

2 HEARING OFFICER WILLIAMS: Let's go off.

3 MR. WHEATLAND: Yeah, thank you, that  
4 would help.

5 (Off the record.)

6 MR. WHEATLAND: All right, I have two  
7 items, then, please. First, I'd like to ask the  
8 Committee to take official notice of the noise and  
9 vibration section of what I believe is the staff's  
10 preliminary staff assessment in the Tesla Power  
11 Plant proceeding, 01-AFC-21.

12 MR. KRAMER: No objection.

13 HEARING OFFICER WILLIAMS: Okay, we will  
14 do that.

15 MR. WHEATLAND: And second of all, Mr.  
16 Bastasch has been recalled, and I'd like to ask  
17 him a few questions regarding exhibit 4B-10.  
18 Whereupon,

19 MARK BASTASCH  
20 was recalled as a witness herein, and having been  
21 previously duly sworn, was examined and testified  
22 further as follows:

23 DIRECT EXAMINATION

24 BY MR. WHEATLAND:

25 Q Mr. Bastasch, did you prepare exhibit

1 4B-10?

2 A I did.

3 Q Would you please briefly describe how  
4 you prepared this document?

5 A Certainly. I took the document, the  
6 electronic Word document that was provided by  
7 staff; copied that into MicroSoft Excel. Added a  
8 column called staff order. Then inserted a  
9 numerical number increasing downward from 1 to  
10 approximately 35.

11 I then did a sort, maintaining order on  
12 the noise limit column. That would be the fifth  
13 column over. And inserted the SJVEC limits as  
14 proposed by the applicant and as proposed by the  
15 staff.

16 The only modifications I made to those  
17 were the distance, and I used the same geometric  
18 assumptions that staff did to be consistent with  
19 their equivalent noise levels at 1000 feet.

20 Q Okay, thank you.

21 MR. WHEATLAND: Then that completes the  
22 direct examination on rebuttal.

23 HEARING OFFICER WILLIAMS: Is there any  
24 objection to 4B-10?

25 MR. KRAMER: Mr. Baker would like to ask

1 one question of him, or a question or two, if  
2 that's acceptable?

3 HEARING OFFICER WILLIAMS: Okay.

4 CROSS-EXAMINATION

5 BY MR. BAKER:

6 Mr. Bastasch, why did you sort the table on  
7 the fifth column, noise limit, instead of the  
8 seventh column, equivalent noise level at 1000  
9 feet?

10 A Because I think it's interesting to note  
11 that as proposed by the applicant the 49 limit  
12 falls midway, or two-thirds down. And as proposed  
13 by the staff it's second or third from the bottom.

14 MR. FREITAS: Can we have a reference  
15 point?

16 MR. BASTASCH: A third of the way down.

17 MR. FREITAS: Could we use a -- is  
18 that --

19 MR. WHEATLAND: Yes. Mark, make the  
20 correction with respect to how you characterized  
21 where the applicant's proposed level would fall.

22 MR. BASTASCH: The applicant's proposed  
23 level falls one-third way down the chart --

24 MR. FREITAS: Which would be close to  
25 what number on there?

1 MR. TRASK: It's the bolded lines there,  
2 Keith.

3 MR. FREITAS: Oh, the bolded lines?  
4 Okay.

5 MR. BASTASCH: The boldeds there. And  
6 it says proposed by applicant --

7 MR. FREITAS: Right, right, okay. I got  
8 you there.

9 MR. BASTASCH: -- and proposed by staff.

10 MR. FREITAS: You're just using that as  
11 an illustrative showing --

12 MR. BASTASCH: Right, that's just an  
13 illustrative chart.

14 MR. FREITAS: Yeah, okay. Great.

15 MR. KRAMER: That's it, thank you.

16 HEARING OFFICER WILLIAMS: Okay.

17 MR. WHEATLAND: I'll note that this  
18 table was prepared early this morning so it  
19 doesn't reflect those changes that Mr. Baker made  
20 to his table during his examination.

21 HEARING OFFICER WILLIAMS: Okay, good.  
22 Okay, we'll admit 4B-10. Yes? Mr. Freitas.

23 CROSS-EXAMINATION

24 BY MR. FREITAS:

25 Q Say your last name.

1           A     Bastasch.

2           Q     Bastasch.  Mr. Bastasch, did you check  
3 your work?

4           A     I did.

5           Q     And did you check it longhand or just by  
6 the computer?

7           A     Well, there wasn't much room for error  
8 since I copied by Word into Excel.  And all I did  
9 was insert the columns of performance sort, so  
10 that's a rather routine calculation.

11          Q     And there's no, in your opinion there  
12 was no error transferring from one format to  
13 another format?

14          A     There's very little chance for that.

15               MR. FREITAS:  Okay, thank you.

16               HEARING OFFICER WILLIAMS:  Okay.  Then  
17 are we prepared to close out noise?

18               MR. KRAMER:  Yes.

19               MR. WHEATLAND:  We're prepared.

20               (Laughter.)

21               MR. WHEATLAND:  May I go off the record  
22 one moment, please?

23               HEARING OFFICER WILLIAMS:  Yes, off the  
24 record.

25               (Off the record.)

1 HEARING OFFICER WILLIAMS: Yes, we're  
2 back on the record with some final matters.

3 Applicant, do you want to --

4 MR. HARRIS: Yes, a couple of minor  
5 things. First off, we need to have a new exhibit  
6 1.1. This would be a letter from Rick Thomas of  
7 Calpine to the CEC regarding the name change of  
8 the project. Name change was dated March 4, 2002.  
9 That's been added to the tentative exhibit list as  
10 exhibit 1.1. And that's to pick up the change in  
11 the name of the project from The Central Valley  
12 Energy Center to San Joaquin Valley Energy Center.

13 HEARING OFFICER WILLIAMS: Okay, that  
14 will be admitted.

15 MR. HARRIS: I want to clear up to a  
16 transcript reference. On February 18th I think  
17 consistently referred to the AFC as exhibit 3.  
18 It's actually exhibit 1. The transcript is  
19 incorrect, but the tentative list is now correct.

20 In terms of conditions, and this relates  
21 to staff's document 20, I think. Staff and the  
22 applicant have gone through staff's response to  
23 the applicant's proposed changes to conditions.  
24 Should I just highlight the ones where we still  
25 have outstanding issues, or do you want to go



1 through each one of them?

2 MR. KRAMER: Might be clearer, and I  
3 think it will be easiest for the Committee to look  
4 at exhibit 20 to find the language of agreement.

5 MR. HARRIS: Okay, let's go through each  
6 one of them. AQC-3, the document, as set forth in  
7 20, I guess it is, that's acceptable to the  
8 applicant.

9 MR. KRAMER: No, you mean AQC-1, I  
10 believe, because --

11 MR. HARRIS: Sorry, AQC-1.

12 MR. KRAMER: -- 3 we still disagree  
13 about.

14 MR. HARRIS: Yeah, AQC-1 is acceptable.

15 UNIDENTIFIED SPEAKER: You blew it,  
16 Paul.

17 MR. KRAMER: Nice try.

18 (Laughter.)

19 MR. HARRIS: AQC-3 is not acceptable.  
20 AQC-5 is not acceptable. And AQC-7 is not  
21 acceptable.

22 MR. KRAMER: However, AQC-4 is.

23 MR. HARRIS: Correct, 4 and 6 are  
24 acceptable.

25 MR. FREITAS: One, 4 and 6 are

1 acceptable?

2 MR. HARRIS: Let me just go through them  
3 now, okay. One is acceptable; 3 is not  
4 acceptable; 4 is acceptable; 5 is not acceptable;  
5 6 is acceptable; 7 is not acceptable.

6 Cultural-6 and 7 are acceptable to the  
7 applicant as proposed by staff.

8 Gen-2 we've basically withdrawn our  
9 proposal there, and we agree with the staff's  
10 position.

11 MR. KRAMER: And that's the same case  
12 for Cultural-6 and 7, correct?

13 MR. HARRIS: That's correct. Do you  
14 want to go ahead and pick out the rest of these?

15 MR. KRAMER: Okay. Paleontological-1 is  
16 okay. Actually there's Paleo-1 through 6 are all  
17 okay. And 7.

18 Then hazardous materials condition 3 is  
19 okay; as in exhibit 20. Hazardous-4, 6 and 10 are  
20 also acceptable to both parties.

21 Land use-1, revisions to the condition  
22 are acceptable to both. Same for land use-2.

23 Public health we need to get back to the  
24 Committee. There was an agreement that was  
25 reflected, but there was only one copy of the

1 condition during that discussion. And Alvin  
2 Greenberg, I think he wanted to look at a little  
3 bit of it. But we propose to report back to the  
4 Committee either on the filing of our first brief  
5 or before that as to language that's acceptable to  
6 both of us.

7 Socioeconomics-2 is acceptable to both.  
8 As are soil and water-3, soil and water-6, soil  
9 and water-7; transportation-3, transportation-7;  
10 transmission line safety and nuisance-3.

11 And waste management-6, although in that  
12 case I'll just note that there was a tie-in with  
13 AQC-3 discussed at the hearing. It's staff's hope  
14 that AQC-3 survives and we don't consider the  
15 language that would be deleted from Waste-6 to be  
16 a substitute for that.

17 MR. HARRIS: Can I comment on that one,  
18 too? Applicant had not requested that that AQC-3  
19 be deleted in its entirety. It requested that it  
20 be substantially amended.

21 MR. KRAMER: Yeah, but we think you took  
22 enough out that we're not happy.

23 MR. HARRIS: That's right. But the  
24 point is the --

25 MR. KRAMER: Correct.

1 MR. HARRIS: -- tie-in is not that we've  
2 asked to eliminate it, it's that we have different  
3 language.

4 MR. FREITAS: And I think in my cross I  
5 went over that with Mr. Walker, too.

6 MR. KRAMER: Waste-7 is okay to both  
7 parties as summarized in exhibit 20. As is waste-  
8 8. So, 20 is a good reference point to find the  
9 points of agreement.

10 HEARING OFFICER WILLIAMS: Okay. If you  
11 haven't done so already, just make sure I get an  
12 electronic version of it. I appreciate it, Matt.  
13 Thanks.

14 MR. KRAMER: I'm sure you received it.

15 HEARING OFFICER WILLIAMS: Yeah, but --

16 MR. KRAMER: Would you like us to send  
17 another, just to be sure?

18 HEARING OFFICER WILLIAMS: I'm fairly  
19 sure I received it. I'll let you know.

20 MR. HARRIS: A couple other minor  
21 things.

22 HEARING OFFICER WILLIAMS: Okay.

23 MR. HARRIS: I think we've moved in the  
24 entire application for certification and the  
25 appendices, but I would like to suggest a motion

1       that to the extent we've omitted any of the  
2       application for certification or the appendices  
3       that those be moved into evidence now.

4               HEARING OFFICER WILLIAMS:   So noted.  
5       We'll do that.   And also the Committee will  
6       distribute the final exhibit list, and we'll have  
7       the opportunity at that time to reconcile matters.

8               But to the extent that the document  
9       appears on our exhibit list it's prima facie case  
10      that it's been admitted.

11              MR. FREITAS:   How do you handle --

12              MR. HARRIS:   One exception.   The one  
13      exception is 2X -- I'm sorry, 4B-14 is the paper  
14      provided by Mr. Thiessen.   We want to have a  
15      chance to look at that before we agree to have  
16      that moved into evidence.   And so, upon receipt of  
17      that, we will let the Committee know whether we  
18      still have an objection as to moving it into  
19      evidence.

20              HEARING OFFICER WILLIAMS:   Okay.   We'll  
21      also set out on the exhibit list the matters that  
22      the Committee has officially noticed, including  
23      Mr. Freitas' appendix 8 from the ISO.   And I  
24      believe he'd indicated he'll provide copies.

25              MR. FREITAS:   Yeah.   But how do you, on

1 the official, on the noted documents how do we  
2 include those -- is there a list?

3 HEARING OFFICER WILLIAMS: Yes.

4 MR. FREITAS: You provide us with a  
5 list?

6 HEARING OFFICER WILLIAMS: Yes, I'll  
7 make sure that that's emailed to you to give you  
8 plenty of time to comment on it.

9 MR. FREITAS: Thank you.

10 MR. HARRIS: We have no objection to  
11 including that in the exhibit list, the ones  
12 you've taken notice of.

13 HEARING OFFICER WILLIAMS: Yes, yes, we  
14 want to insure that everything is on our exhibit  
15 list, even the matters that we've taken official  
16 notice of.

17 MR. HARRIS: One other question. Can I  
18 just confirm the dates for the briefs? I have  
19 3/28 for opening briefs; and then replies are --

20 HEARING OFFICER WILLIAMS: 4/11.

21 MR. HARRIS: -- 4/11 --

22 MR. KRAMER: That's what I have.

23 MR. HARRIS: Okay, thank you.

24 HEARING OFFICER WILLIAMS: Okay. Okay,  
25 with that we'll -- exceptions noted, we'll close

1 the record.

2 ASSOCIATE MEMBER GEESMAN: Thank you,  
3 everybody.

4 HEARING OFFICER WILLIAMS: Thank you.

5 (Whereupon, at 6:30 p.m., the hearing  
6 was adjourned.)

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## CERTIFICATE OF REPORTER

I, VALORIE PHILLIPS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of February, 2003.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345